***United States Court of Appeals***

***for the Second Circuit***

# APPENDIX

# 77-7150

B P/S

# United States Court of Appeals

**For the Second Circuit.**

UNITED STATES COURT OF APPEALS
FILED
MAY 16 1977
DANIEL FUSARO, CLERK
SECOND CIRCUIT

CARL E. PERSON and CHRISTIAN THEE,

*Plaintiffs-Appellants,*

*against*

NEW YORK POST CORPORATION,

*Defendant -Appellee .*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

## JOINT APPENDIX.

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76C 1217

| PLAINTIFFS | DEFENDANTS |
|---|---|
| PERSON, CARL E. | NEW YORK POST CORPORATION |
| CARL E. PERSON | NEW YORK POST CORPORATION |

CAUSE

Civil Rights Act 42 USC 1985(2), Investment Advisors Act of 1940, Securities Act of 1933, Securities Exchange Act of 1934 to enjoin newspaper group from publishing tombstonex ads etc. Seeks: $1,000,000.00 - Related Case: 75 C 1473

ATTORNEYS

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212-349-4616

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76C 1217 PERSON vs NEW YORK POST CORPORATION

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 6-25-76 | | Complaint filed.Summons issued. (1)cg |
| 6-25-76 | | Clerk's order for personal service filed. (2)cg |
| 7-6-76 | | Notice of motion ret. 7-12-76 at 4:15 PM for a preliminary injunction under Rule 65(a) FRCP enjoining the New York Post Corp from publishing any tombstone advertising etc. filed. (3)cg |
| 7-6-76 | | Memorandum of law in support of plntff's motion for a preliminary injunction filed. (4)cg |
| 7-6076 | | Amended complaint filed with jury demand. (5)cg |
| 7-13-76 | | By NEAHER, J.--Order extending time for deft to answer complaint to 7-27-76 filed. (6) |
| 7-20-76 | | Before NEAHER,J-Case called. Pltff's application for an order granting leave to serve an amended complaint granted. Motion for preliminary injunction adj'd to 9-7-76 . |
| 7-21-76 | | By NEAHER,J.- Order dtd. 7-19-76 granting pltff leave to file amended complaint filed. (7) |
| 7-22-76 | | Second amended complaint filed. (8) |
| 7-26-76 | | Summons ret and filed/executed. Affidavit attached. (8a) |
| 8/2/76 | | By NEAHER,J.- Order filed that time for deft N.Y. Post Corp. to move as to 2nd amended complaint extended to 8/17/76 that time for the Post's to serve answering papers is extended to 8/17/76-that return date for Person's motion for preliminary injunction etc. is 9/7/76 at 2:00 P.M. etc. (9) |
| 8-6-76 | | Pltff's notice of joinder of motion for perliminary injunction filed. (10) |
| 8-[illegible]-76 | | Notice of appearance filed. (pltff) (11) |
| 8-19-76 | | Notice of motion ret. 9-7-76 with memo ofl law to dismiss filed. (12/13) |
| 9-3-76 | | By NEAHER,J-Stip. dtd 9-2-76 that on or before 9-10-76 the pltffs shall serve on the Post all answering papers in response to the motion to dismiss etc filed. (14) |
| 9-7-76 | | Notice of joinder of motion filed. (15) |
| 9-7-76 | | Notice of cross-motion ret. 9-20-76 with memo of law for perliminary injunction etc., filed. (16/17) |
| 9-17-76 | | Affidavit of M. Abram with memo of law in support of motion to dismiss filed. (18/19) |
| 9-23-76 | | By NEAHER,J.- Order ajdj of motion ret. 9-20-76 to 9-29-76 etc., filed. (20) |
| 9-20-76 | | Before NEAHER,J-Case called. Deft's motions to dismiss and for summary judgment argued-decision reserved. Pltff's motion for preliminary injunction and cross motion for more discvoery argued decision reserved. Case adj'd w/o date. |
| 2-23-77 | | By NEAHER,J Memo * Order dtd 2-22-77 denying pltffs' motion for a preliminary inj. requiring the deft to publish pltffs' advertisement ans granting deft's motions to dismiss the complaint and for summary judgment on the antitrust claims filed. (21) |
| 2/23/77 | | Judgement dtd 2/22/77 that the pltff take nothing of the deft and that the pltff's motion for a preliminary injunctionis deinied and that the defts motions to dismiss the complaint and for summary judgment on the antitrust claims are granted and that the moitons of both parteies for attys fees are denied (22) |
| [illegible]-1-77 | | By NEAHER,J Consent to change attys for deft filed. (23) |
| 3/7/77 | | Notice of substitution of atty's for defendant, filed. (24) |
| 3/7/77 | | Notice of motion ret 3/18/77 for an order for reqrgument of each of the motions and cross-motionswith memo of law in support mf motion and amended dotice of motions. (25/26/27) |

Continued

76C 1217

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF | DEFENDANT | DOCKET NO. |
|---|---|---|
| PERSON | THEF | PAGE ____ OF ____ PAGES |

| DATE | NR. | PROCEEDINGS |
|---|---|---|
| 3-21-77 | | By NEAHERJ-Stip. that the return date of the motion to reargue is adiourned to 3-31-77 filed. (28) |
| 3-24-77 | | Notice of appeal for the pltff filed. Copy to C of A. (29) |
| 3/29/77 | | MEMORANDUM of law in opposition to pltff's motion for reargument filed by atty's for def. Motion to be heard on 3/31/77. lg. (30) |
| 4/8/77 | | By NEAHER, J - Order dtd 4/7/77 that the moiton for reagrument and leave to amend is denied. (31) |

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

76C 1217

| | | |
|---|---|---|
| CARL E. PERSON, | : | CIVIL ACTION NO. |
| Plaintiff, | : | |
| -against- | : | COMPLAINT |
| NEW YORK POST CORPORATION, | : | (Jury Demand) |
| Defendant. | : | |

The plaintiff, acting pro se, as and for his complaint respectfully alleges:

1. Jurisdiction is based on § 214 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-14; §§ 1-2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-2; § 22(a) of the Securities Act of 1933, 15 U.S.C. § 77v(a); § 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa; and the Rules and Regulations thereunder; § 1985(2) of the Civil Rights Act, 42 U.S.C. § 1985(2); and the principles of pendent jurisdiction.

2. Plaintiff, an attorney admitted to practice in New York, resides at 329 E. 63rd Street, New York, N.Y. 10021. Plaintiff is the attorney for Christian Thee, a resident of the Eastern District of New York, who is suing (i) General Mills, Inc. and General Mills Fun Group, Inc. (formerly known as Parker Brothers, Inc.) in the Eastern District of New York under Index No. 75 C 1554 and (ii) Marvin Glass & Associates in the Northern District of Illinois, Eastern Division, under Index No. 76 C 1785. Plaintiff is employed by Mr. Thee on a contingent-fee basis. A copy of the annexed offering circular, dated June 25, 1976 (Exhibit A hereto) describes the basis for Mr. Thee's two actions (see pp. 7-12).

3. Defendant, New York Post Corporation, upon information and belief, is a New York corporation. Defendant has its principal place of business at 210 South Street, New York, N.Y. 10002 and is qualified to and does business in the Eastern District of New York. Defendant is the publisher of the New York Post, one of the few major daily newspapers in New York City.

4. Plaintiff is a "political litigator" in the fields of antitrust and (business-oriented) civil rights litigation and is attempting to establish a law practice (others could call it a "clinic") which in substance would be a "private justice department" to assist clients with meritorious claims in the antitrust and (business-oriented) civil rights fields who are in need of legal assistance but cannot afford to pay the full amount of litigation expenses reasonably anticipated. Mr. Thee is one of such needy persons. The reason that a "private justice department" is needed is that federal and state agencies do not have a "duty" to enforce the laws as to specific violations alleged. Such governmental agencies operate instead on a highly discretionary basis, with limited personnel and financing, and are unable to assist most private persons in need of help in the antitrust and (business-oriented) civil rights areas of law.

5. In furtherance of his desire to assist Mr. Thee and in furtherance of his plans to have the facilities and financing comparable to the United States Justice Department for his present and future clients, plaintiff prepared and filed information with the Securities and Exchange Commission (the "SEC") under Regulation A under the Securities Act of 1933. The SEC's New York Regional Office reviewed the submitted material and declared that the Thee offering was effective for sale on June 25, 1976. See copy of offering circular annexed hereto as Exhibit A.

6. On June 22, 1976, on behalf of the Mr. Thee, plaintiff submitted a copy of the offering circular to defendant together with a form of tombstone

advertisement (a copy of which is annexed as Exhibit B) to obtain a quote on the price of the advertisement and to run the advertisement if the price was acceptable.

7. On June 23, 1976, defendant rejected the copy and stated that the ad was not acceptable or suitable. This rejection occurred again on June 25, 1976, at which time the General Manager of defendant said he would, at my request, resubmit the tombstone advertisement to the defendant's Advertising Acceptability Committee for reconsideration, together with my stated intention to file this action against defendant.

8. Plaintiff submitted identical requests to run tombstone advertising to the New York Times, Wall Street Journal (Eastern Edition), New York Law Journal, Staten Island Advance and 7 leading financial or business magazines, among other publications, and was turned down by each of the named newspapers and one magazine on similar grounds. No major daily newspaper in New York City suitable for plaintiff's needs would take the offered advertisement. Without such tombstone advertising, plaintiff's client cannot sell his issue on an economic basis. The newspapers and magazine which turned down plaintiff's offered tombstone advertisement (placed by plaintiff on behalf of his client, Mr. Thee) together with any other newspapers and magazines which turn down some but not all tombstone advertisements for federal public offerings (other than for credit reasons) are hereby designated as co-conspirators of defendant.

9. Defendant advised plaintiff that it has rejected other tombstone advertisements, as well, and that defendant does publish tombstone advertisements for some public offerings. The defendant's basis for selection is made in substantial part on the merits of the proposed offering. The defendant and co-conspirators screen proposed public offerings for their readership and only permit tombstone advertisements to run where the offering

meets the investment suitability standards set by the newspaper or other publications, which favor almost exclusively the offerings by major corporations or governmental agencies. The federal policy of permitting small businesses to raise capital is openly flouted by this discriminatory policy favoring major corporations, which entails an investment recommendation by the newspaper to readers (who purchase the paper) that the advertised offering is suitable for them, in violation of the Investment Advisers Act of 1940 (sale of investment advice without registration), the Securities Act of 1933 (as an illegal prospectus not reviewed by the SEC) and the Securities Exchange Act of 1934 (manipulative and deceptive), and the Rules and Regulations thereunder. The offering of Mr. Thee was rejected in spite of the fact that investors can redeem their shares at or very close to the amount of their investment, and for such reason any market which developed for the shares would necessarily be higher than the offering price. The securities advertised in defendant's newspaper are substantially different. A substantial part of such securities could result in substantial losses of the invested capital of the purchasers of such securities. The free-enterprise system is seriously threatened by the defendant and co-conspirators who make this "free-enterprise system" for the raising of capital only to the major corporations, as a practical matter, resulting in monopolies and higher prices for consumers.

10. Upon information and belief, defendant is aware that the co-conspirators have similar policies and defendant has combined and conspired with these co-conspirators, including all other major daily newspapers in New York City, to prevent capital from being raised in competition with or against the best interests of the major corporations which regularly advertise in their newspapers, or the major corporations which in fact own most of the major daily newspapers in New York City. The defendant and other

co-conspirators also use their editorial policy to favor the interests of such major corporations and advertisers and to disfavor the interests of competitors of such corporations or persons who would try to enforce their rights against such corporations.

11. Plaintiff has been injured by this unlawful practice, to the extent of $1,000,000 or such additional amount as may be proved at trial.

12. Defendant's actions are preventing plaintiff and his clients from enforcing their various rights under the 1st Amendment, including the right of political association, the right to petition the courts for a redress of grievances and the right to freedom of speech, in violation of § 1985(2) of the Civil Rights Act, 42 U.S.C. § 1985(2).

PRAYER

1. Plaintiff requests that this court adjudge and decree that the activities of defendant and co-conspirators are in violation of each of the statutes named in ¶ 1 of this complaint and in violation of various New York laws and/or rules.

2. Plaintiff requests that this court grant a permanent injunction prohibiting the defendant and all officers, directors, employees, agents and attorneys of defendant from accepting or publishing any tombstone advertising for any SEC registered or Regulation A public offerings unless defendant accepts all such tombstone advertising offered to it (except where the advertiser refuses to pay in advance and is a bona fide credit problem).

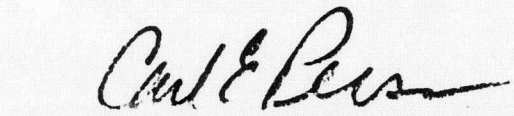
3. Plaintiff requests that this court enter a judgment in favor of plaintiff in the amount of $1,000,000 or more as compensatory damages and $1,000,000 in punitive damages against the defendant.

4. Plaintiff requests such other and further relief as this court may deem just, equitable and proper.

Jury Demand

PLEASE TAKE NOTICE that plaintiff DEMANDS A TRIAL BY JURY, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable by right by a jury.

Dated: New York, New York
June 25, 1976



Carl E. Person, pro se
132 Nassau Street
New York, N.Y. 10038

(212) 349-4616

Exhibit A

OFFERING CIRCULAR

100,000 Shares, $5 Par Value, in

the Claims of Plaintiff CHRISTIAN THEE in his Lawsuits against Defendants

GENERAL MILLS, INC.
GENERAL MILLS FUN GROUP, INC.
(formerly named PARKER BROTHERS, INC.)
and MARVIN GLASS & ASSOCIATES

Maximum 25% Contingent Compound Annual Interest
Callable by Issuer with No Loss of Accrued Contingent Interest
Redeemable by Shareholder with a Loss of Accrued Contingent Interest

---

THESE SECURITIES INVOLVE A HIGH DEGREE OF RISK
AS TO THE 25% CONTINGENT COMPOUND ANNUAL INTEREST
(See "Risk Factors to be Considered")

---

THERE IS PRESENTLY NO MARKET FOR THE SECURITIES OFFERED HEREIN. ASSUMING COMPLETION OF THE OFFERING, UNDER PRESENT MARKET CONDITIONS THERE IS A DISTINCT POSSIBILITY THAT A VIABLE MARKET IN THE SECURITIES OF THE ISSUER WILL NOT DEVELOP; EVEN IF A MARKET DOES IN FACT DEVELOP, THERE IS A DISTINCT POSSIBILITY THAT IT WILL NOT BE SUSTAINED.

THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION DOES NOT PASS UPON THE MERITS OF ANY SECURITIES NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE.

| | Offering Price to Public (1) (3) | Underwriting Discounts or Commissions (2) | Proceeds to the Trustee (2) |
|---|---|---|---|
| Per Share . . . . . | $ 5.00 | None | $ 5.00 |
| Total (3) . . . . . | $500,000 | None | $500,000 |

(1) The Issuer, Christian Thee, is offering the 100,000 shares in his "Thee Action" (see p. 9 for definition) on a straight "best-efforts" basis (see "Plan of Distribution" at p. 23 ). The sums collected from subscribers used to purchase the offered securities will be held in trust by the Issuer's attorney of record in the Thee Action for use in accordance with the terms and conditions contained in this Offering Circular (see "Use of Proceeds" at p. 15, and "Description of the Securities" at p. 18 ). Any sums collected from subscribers which are not accepted by the Issuer for purchase of any of the offered securities will be returned promptly by the Issuer, without interest or deduction.

"A"

(2) Assuming sale of all of the 100,000 shares offered hereby, the Issuer will turn over to the Trustee $500,000. The expenses of this offering will be paid out of interest earned on the U. S. Government securities purchased by the Trustee with the gross proceeds of the offering, or by the Issuer himself. Such expenses are estimated to amount to about $3,000, including photocopying and printing expenses, blue sky and other filing fees, tombstone advertising and postage. No legal or accounting fees are to be paid in connection with this offering. No underwriters are to be employed by the Issuer, and no commissions or discounts of any kind will be paid on the sale of any of the shares offered hereby. The Issuer will be offering the securities by himself, without the aid of any employees, agents, salesmen, brokers, dealers or underwriters.

(3) Shares will be sold in minimum lots of 100 shares.

This offering involves:

(a) Special risks concerning the 25% contingent compound annual interest on the offered securities. (See "Risk Factors to be Considered", page 4 .)

(b) Possible dilution of any proceeds available for distribution to shareholders by any additional financings or any use of expert witnesses on a contingent-fee basis (See "Possible Dilution of Proceeds of any Recovery", page 22 .)

(c) Contingent payment of 25% compound annual interest, payable only if the Thee Action is successful in obtaining sufficient recovery through judgment, settlement or otherwise. (See "Division of Proceeds of any Recovery", page 19 , and "Possible Dilution of Proceeds of any Recovery", page 22 .)

(d) Right of a shareholder to redeem his shares from the Trustee at any time for the lower of $5.00 or net asset value per share with no deductions, but with a forfeiture of all accrued and future contingent compound annual interest. (See "Redemption by Shareholders", page 18 .)

(e) Right of the Issuer to call (by lot) any or all of the shares (but not the accrued contingent compound annual interest) for redemption at the net asset value per share, without termination of the shareholder's interest in all accrued contingent compound annual interest, which call would stop any further accrual of the 25% contingent compound annual interest. (See "Calls by the Issuer", page 19 .)

(f) An offer only to individuals and partnerships who are not in the business of collecting bills or adjusting claims. (See "Plan of Distribution", page 23 , and "Material Litigation and Liens", page 24 ). Other persons, including corporations and associations, may not buy the shares.

---

CHRISTIAN THEE
76 State Street
Brooklyn, N.Y. 11201

(212) 834-1513

---

The date of this Offering Circular is June 25, 1976.

The 100,000 shares in the Thee Action are offered by the Issuer on a straight best-efforts basis, subject to prior sale and to withdrawal, cancellation or modification of the offer without notice, to approval of certain legal matters for the Issuer by Carl E. Person, Esq., and to certain further conditions set forth in this Offering Circular. The Issuer reserves the right to reject at any time, in whole or in part, any order for the purchase of the shares being offered hereby.

---

No person has been authorized to give any information or to make any representations other than those contained in this Offering Circular in connection with the offer contained herein and, if given or made, such information or representations must not be relied upon. This Offering Circular does not constitute an offer to sell, or a solicitation of any offer to buy, the securities offered hereby in any state to any person to whom it is unlawful to make such offer or solicitation.

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Until September 23, 1976 (ninety days after the first date upon which the securities offered hereby were bona fide offered to the public) all dealers effecting transactions in the securities offered hereby, whether or not they participated in this distribution, may be required to deliver a current offering circular with respect to those securities to any purchasers thereof prior to or concurrent with the receipt of the confirmation of the sale of those securities.

## THE ISSUER

CHRISTIAN THEE, the Issuer, age 41, is a professional painter and designer, and part-time developer of games. He resides and has his principal place of business at 76 State Street, in the Brooklyn Heights section of Brooklyn, New York 11201, telephone number (212) 834-1513. During September, 1975, the Issuer commenced an action (the "Thee Action") against defendants General Mills, Inc., General Mills Fun Group, Inc. and Marvin Glass & Associates alleging they wrongfully appropriated the valuable business and property interests of the Issuer in a game idea developed by him and presented to Parker Brothers, Inc., and that Parker Brothers, Inc. (under its new name General Mills Fun Group, Inc.) published the game under the name MASTERPIECE. Defendants claim the game was developed independently by Marvin Glass & Associates. The Issuer is offering shares in the Thee Action to raise money needed by him to finance the Thee Action.

## RISK FACTORS TO BE CONSIDERED

The securities being offered by this Offering Circular are speculative in nature as to payment of the contingent compound annual interest of 25%. Therefore, each prospective investor should consider very carefully certain risks and speculative factors inherent in and affecting the potential for recovery in the Thee Action and the effect upon the offered shares prior to making any investment in the shares.

1. The Issuer may not be able to win or settle the Thee Action, in which case the shareholders would obtain no contingent interest whatever on their investment. It should be noted that at all times the shareholder will be able to redeem his shares even if the Issuer fails to win or favorably settle the Thee Action. The redemption price is $5.00 per share or less, depending on market value fluctuations of the short-term U. S. Government securities to be purchased by the Trustee. Even if the shares are called by the Issuer, the shareholders may receive less than $5.00 per share, depending on the market value of the U. S. Government securities to be purchased by the Trustee.

2. No motion for summary judgment has been made by any party to the Thee Action and, therefore, the court has had no opportunity to rule on whether the Issuer has raised any issues of fact for determination by the trier of fact (jury).

3. Even if the Issuer has a trial, obtains a jury verdict and a final judgment in his favor, any of the defendants would have the right to appeal on any grounds alleged by them, which could possibly result in a new trial or even a judgment against the Issuer. Any appeals would delay the ultimate determination of the Thee Action and any ultimate payment of the contingent compound annual interest to the shareholders.

4. The Issuer's agreement to pay the 25% contingent compound annual interest to shareholders may make any settlement of the Thee Action more difficult to achieve as time passes by, assuming any settlement would be possible at all. As time passes by, the Issuer will be required to pay an ever-increasing dollar amount of contingent compound annual interest to shareholders, which would require an ever-increasing payment in settlement of the Thee Action for the Issuer to net the same dollar amount in settlement.

5. Defendants in many lawsuits normally try to postpone any settlement or adverse judgment because of the earnings or other income they make in the meantime by use of the money which otherwise would be paid to the plaintiffs in the lawsuits. The cost of continued litigation to defendants frequently is far less than the additional earnings or income they can make, resulting in an unwillingness to settle for other than "nuisance value" unless absolutely necessary.

6. The Issuer has alleged in part that the defendants are part of an industry-wide conspiracy to "steal" game ideas from independent game developers such as the Issuer. The defendants in the Thee Action could well decide not to ever settle the action because of a possible belief that such settlement would constitute a tacit admission that defendants performed the alleged activities, in whole or in part. In such event, the Issuer would be obliged to go through the trial and various appeals to obtain a final resolution of the issues.

7. Any judgment or settlement in favor of the Issuer may be insufficient to cover all of the contingent compound annual interest of 25%, in which case the shareholders would obtain less than the 25% rate.

8. A market for the offered shares may not develop after the offering.

9. Even if a market develops, any redemptions or calls may destroy any such market for the shares, and no market may develop for the contingent payments of interest which shareholders would have after any call of their shares.

10. Prospective investors who obtain the advice of attorneys experienced in the areas of law covered by the Thee Action may be in a better position to analyze the merits of this offering than prospective investors who do not obtain such advice. These areas of law include, but are not limited to, litigation, appeals, trials, antitrust, patents and copyrights and securities law.

11. The interest to be earned on the U. S. Government securities to be purchased by the Trustee with the gross proceeds of this offering may not be sufficient to pay all of the expenses necessary in fully prosecuting the Thee Action. In such event, the alternatives are: (a) one or more of the attorneys for the Issuer to advance needed amounts of money in anticipation of subsequent repayment; (b) a private offering and sale of litigation shares in exchange for the services of expert witnesses (if permitted by law), investigators, paralegals and others; (c) oral pre-trial examinations under oath of defendants and witnesses to take place by tape recordings then transcribed by the Issuer's attorneys (in lieu of the use of costly court reporters); (d) reduction of efforts in prosecuting one or both of the two actions, possibly in connection with an abandonment of one or more of the Issuer's assorted claims; (e) a private offering and sale of litigation shares to raise needed money; (f) another public offering of litigation shares at a subsequent time with possible changes in offering terms and conditions; and (g) payment of expenses by the Issuer himself (an unlikely alternative because of the Issuer's poor financial condition).

12. The securities of the Issuer are being offered on a straight "best-efforts" basis and if insufficient funds are raised from the offering

the Issuer may not be in a position to fully prosecute the Thee Action. Subscribers' funds will be returned in the event that the funds available to the Issuer are insufficient to prosecute the action on a reasonable basis.

13. All of the offered 100,000 shares may not be sold, thereby reducing the interest on U. S. Government securities available to the Trustee for paying necessary litigation expenses.

14. The disclosures contained in this Offering Circular and in the periodic reports to shareholders and the financial press could give undue advantage to the defendants in the Thee Action or tend to prejudice the Issuer's case. The Issuer's attorney of record does not believe this is likely to occur, however. The lack of available funds to fully prosecute the Thee Action is considered to be far more prejudicial than any such disclosures.

15. The Issuer, a key witness in the Thee Action, could die or become unable to testify at trial. However, the Issuer has already been examined under oath by defendants before a court reporter, and a transcript of his deposition has been executed by the Issuer. This transcript may be read at the trial in the event of such death or disability, although the reading of such transcript would not be as valuable to proving the Issuer's case as live testimony by the Issuer.

16. The information contained in this Offering Circular is necessarily abbreviated, incomplete and inaccurate. Many of the essential facts alleged by the Issuer are disputed by the defendants, who claim that they are not liable to the Issuer for anything. Shareholders are waiving, to the extent permitted by law, any rights they may otherwise have for full, complete and accurate disclosure. (See "Waiver of Rights to Accurate Disclosure", page 22 .)

17. The offering of shares in a lawsuit is the offering of a new type of investment. There is no history of performance of similar securities; nor is there any history of performance of the Issuer's attorney of record in connection with any similar securities.

18. Corporations and associations, as well as individuals or partnerships in the business of collecting bills or adjusting claims, may be prohibited by a New York statute from purchasing interests in any lawsuits. (See "Plan of Distribution", page 23 , and "Material Litigation and Liens", page 24 .) Accordingly, no offer is being made, directly or indirectly, to any such persons.

19. None of the shareholders shall have any right to control any part of the Thee Action, and shareholders will not be consulted as a matter of right as to any action taken or to be taken by the Issuer or his attorneys in connection with prosecuting, settling, abandoning or otherwise dealing with the Thee Action. The shareholders have no voice, are to remain inactive and are totally dependent upon the Issuer and his attorneys in all matters relating to prosecution, settlement or abandonment of the Issuer's claims against the defendants.

20. The defendants in the Thee Action are represented by highly specialized and well-established legal counsel; whereas, plaintiff Christian Thee (the Issuer) is represented by Carl E. Person, a single practitioner with the aid of local counsel (see "Attorneys for the Parties to the Thee Action").

Dilution

See "Possible Dilution of Proceeds of any Recovery", page 22 , for a description of the circumstances under which the shareholder's interest in any recovery may be reduced by division of proceeds with others.

## ALL STATEMENTS ARE ALLEGATIONS ONLY

Prospective investors should be aware that all of the statements in this Offering Circular concerning the Issuer's claims and the Defendants' defenses are allegations only, and some or all of these allegations may not be proved or provable at the time of trial. No representation is being made that the facts alleged by the Issuer are in fact true, although the Issuer believes the alleged facts may be supportable by a reasonable amount of evidence. Also, the statements in the Offering Circular are necessarily abbreviated, incomplete, inaccurate and subject to change at any time. See "Waiver of Rights to Accurate Disclosure", page 22 .

## DESCRIPTION OF THE THEE ACTION

Background of the Issuer and the Thee Action

Christian Thee, age 41 and the Issuer, has been a professional painter and designer for approximately 20 years. The Issuer attended the University of South Carolina full-time for 3 years and Columbia University part-time for 1 year, majoring in art and architecture at both institutions. The Issuer has been self-employed as a painter and designer for about 10 of the past 20 years, and has been self-employed for the past 5 years. From 1958 or 1959 to the present, the Issuer has developed and designed 4 other games conceived by him (other than ARTIFAX). None of them has been manufactured or published.

During 1958 or 1959, approximately, the Issuer conceived of the idea for a board game based on buying and selling painting replicas, and developed a working model for the game (which he named ARTICRAT at first, later ARTIFAX). From 1958 or 1959 to 1960, the Issuer worked on the 1st working model of the game, then submitted it during 1960 to Parker Brothers, Inc. (under the name ARTICRAT). The game was not accepted, on the alleged ground among others that games with an art subject matter would not sell, and the working model was returned to the Issuer.

The Issuer developed the game further and during 1964, 1965 and 1969 submitted different working models of the game, under the name ARTIFAX, but the game in these new forms was rejected again.

During 1968, Parker Brothers, Inc. was acquired by General Mills, Inc., and in 1970 its name was changed to General Mills Fun Group, Inc., still a subsidiary of General Mills, Inc. During 1970, General Mills Fun Group, Inc. published a board game involving the purchase and sale of painting replicas under

the name MASTERPIECE. Defendants allege that Marvin Glass & Associates, in Chicago, Illinois, developed MASTERPIECE independently of Issuer's ARTICRAT and ARTIFAX, and submitted MASTERPIECE to General Mills Fun Group, Inc. during April, 1970 for review and publication independent of the Issuer's ARTICRAT and ARTIFAX. Defendants state that MASTERPIECE was accepted for publication by General Mills Fun Group, Inc. during May, 1970.

Parties to the Thee Action

On September 22, 1975, the Issuer, Christian Thee, commenced an action against Parker Brothers, Inc. under Index No. 75 C 1554 in the United States District Court for the Eastern District of New York (in Brooklyn, New York) under the title: Christian Thee v. Parker Brothers, Inc. The action was assigned for all purposes to Hon. Henry Bramwell, United States District Judge. In the Issuer's complaint, he alleged that Parker Brothers, Inc. had published a board game containing many unique features and valuable business ideas contained in the board game submitted by the Issuer to Parker Brothers, Inc. in various working models from 1960 to 1969. The game as published by Parker Brothers, Inc. is called MASTERPIECE.

As a result of a newspaper article about the commencement of the action, the Issuer and his attorney of record obtained unsolicited information from several persons in the game industry leading them to believe that the Issuer, after further investigation and discovery, may be able to prove there is a conspiracy in the game publishing industry to "steal" game ideas from independent game designers and developers (such as the Issuer) and publish them without compensating the designer and developer. Accordingly, the Issuer amended his complaint on September 29, 1975 to add two new defendants: General Mills, Inc. (the company which acquired Parker Brothers, Inc. as a subsidiary during 1968) and Marvin Glass & Associates (a professional game and toy designing firm, located in Chicago, Illinois) which defendants claim developed MASTERPIECE independently and submitted it to Parker Brothers, Inc. during April, 1970. Parker Brothers, Inc. changed its name to General Mills Fun Group, Inc. during 1970 and the business has been operated thereafter as a division of defendant General Mills Fun Group, Inc.

The amended title of the action in the United States District Court for the Eastern District of New York is: Christian Thee v. Parker Brothers, Inc., General Mills, Inc. and Marvin Glass & Associates. The only defendants in this part of the Thee Action at this time are General Mills, Inc. and General Mills Fun Group, Inc., because of the severance described immediately below.

On May 4, 1976, the Issuer's claims against Marvin Glass & Associates were severed by court order into a separate action and transferred to the United States District Court for the Northern District of Illinois, Eastern Division, Index No. 76 C 1785; it is entitled Christian Thee v. Marvin Glass & Associates. The Issuer plans to request an order from the Multi-District Panel of federal judges in Washington, D.C. for an order transferring the severed action back to Judge Bramwell, in Brooklyn, New York, for all pre-trial purposes, at the end of which the severed action would be transferred back to Chicago for any trial. Marvin Glass & Associates is the only defendant in the severed action.

These two actions by the Issuer against the three defendants are considered in this offering as a single action, and are referred to hereinafter as the "Thee Action". The Issuer is offering interests in his claims underlying the Thee Action as more fully described in "Description of the Securities", at page 18 .

Issuer's Factual Claims

The Issuer alleges that he submitted working models of his game (ARTICRAT and ARTIFAX) to Parker Brothers, Inc. during 1960, 1964, 1965 and 1969, and that Parker Brothers, Inc. had agreed to compensate the Issuer if Parker Brothers, Inc. published the Issuer's game. The Issuer also alleges that he submitted the game each of the four times under a confidential relationship, even though the first submission (in 1960), according to General Mills Fun Group, Inc., was pursuant to a letter which stated that the Issuer agreed that he was not submitting the game under any confidential relationship. The Issuer contends, among other things, that any such agreement did not exist or that it was induced by fraud.

The Issuer contends that various unique features and valuable business ideas were submitted by the Issuer to Parker Brothers, Inc. constituting property of the Issuer, and that Parker Brothers, Inc. (before and after its name change) and defendant Marvin Glass & Associates unlawfully deprived the Issuer of his business and property rights. The Issuer alleges that the following claimed features and ideas contained in ARTICRAT and/or ARTIFAX were subsequently used by defendants during their development and publication of MASTERPIECE:

(a) Players may start anywhere on the tracks of the two games;

(b) Both games have circular tracks;

(c) Both games use miniature replicas of existing paintings;

(d) Prices of the paintings change from game to game;

(e) Players in both games may sell paintings to a bank;

(f) In both games, the player who lands on the auction space becomes the auctioneer and must auction a painting;

(g) The players in both games may bid competitively on paintings auctioned by the bank;

(h) The players in both games may bid competitively on paintings auctioned by other players;

(i) Players in both games may buy paintings from other players;

(j) Acquisition (ARTIFAX) and inheritance (MASTERPIECE) of paintings are the same game action, essentially;

(k) The design concepts for both games have the following same aesthetic qualities:

(i) hand-tooled appearance; and

(ii) a painting replica occupies center position on both boards.

Issuer's Legal Theories

In his Amended Complaint, the Issuer claims that the alleged facts he seeks to prove at a trial establish his right as a matter of law, if proven, to recover a judgment from the defendants based on the following legal theories:

(a) Conspiracy to restrain trade, in violation of § 1 of the Sherman Act;

(b) Monopolizing and attempting to monopolize, in violation of § 2 of the Sherman Act;

(c) Conspiracy to restrain trade in Washington, D.C., in violation of § 3 of the Sherman Act;

(d) Breach of contract;

(e) Plagiarism and infringement of commonlaw copyright;

(f) Fraud;

(g) Breach of fiduciary and confidential relationship;

(h) Commercial piracy and unjust enrichment;

(i) Prima facie tort; and

(j) Punitive or exemplary damages as to each defendant individually.

Issuer's Claimed Damages

In his Amended Complaint, the Issuer alleges many millions of dollars in damages, but the amount alleged was not based on actual sales records, which were unavailable to the Issuer. The actual amount of damages to the Issuer can be proved at trial only by evidence supplied by the defendants, for the most part, such as the amount of sales of and royalties paid on MASTERPIECE. One possible method of calculating damages is using the amount of royalties on MASTERPIECE

paid and estimated to be payable by General Mills Fun Group, Inc. to defendant Marvin Glass & Associates. From 1970 (the year of publication of MASTERPIECE) to 1975 (the last year for which the Issuer obtained figures), Marvin Glass & Associates was paid an aggregate of $421,802 in royalties by General Mills Fun Group, Inc., including royalties on licensing agreements with third persons, as follows:

| Year | Units Sold* | Royalties Paid |
|---|---|---|
| 1970 | 12,517 | $ -0- |
| 1971 | 739,491 | $ 60,795 |
| 1972 | 746,964 | $ 122,371 |
| 1973 | 525,363 | $ 105,249 |
| 1974 | 366,995 | $ 84,959 |
| 1975 | 174,219 | $ 48,428 |
| TOTALS | 2,565,549 | $ 421,802 |

* Does not include foreign sales.

The Issuer is unable to estimate, at this time, the amount of royalties which could reasonably be anticipated from sales of MASTERPIECE during and after 1976. Also, it is not clear at this time on what period, if any, the Issuer would be entitled to damages, assuming he could prove liability. The defendants have raised various defenses, some of which would substantially limit the Issuer's claimed damages if asserted successfully. See "Defendants' Answers to the Issuer's Claims", page 12 .

Another possible method of proving the Issuer's alleged damages may be to take the gross sales proceeds received by defendant General Mills Fun Group, Inc. on its sales of MASTERPIECE and deducting related expenses. This is done by an accounting, which the Issuer has requested as an alternative form of relief. The gross sales for 1970 to 1975 have amounted to about $7,405,862 (not including foreign sales or royalties received by General Mills Fun Group, Inc.). The amount of allocable expenses would have to be deducted, but such expenses have not been supplied by General Mills Fun Group, Inc., which contends that such figures are irrelevant.

Other theories for damages may be asserted by the Issuer, which may involve amounts more or less than the amounts described above.

Also, the Issuer alleges various antitrust violations. If the Issuer proves a violation of any of the federal antitrust laws, any related damages proven at trial would be trebled under the federal antitrust laws, and an additional amount (perhaps 10% of the untrebled damages) possibly would be added as assumed reimbursement for the Issuer's assumed legal expenses. Any such assumed legal expenses are part of the Issuer's recovery and are not paid directly to the Issuer's attorney of record.

In addition, the Issuer seeks $10,000,000 in punitive or exemplary damages (often called "smart money") from each of the three defendants. The amount of any such punitive damages would be in the discretion of the jury and applicable law may require that the Issuer prove that the defendants are continually "stealing" game ideas from independent game developers and designers.

This allegation may be substantially more difficult to prove than many of the Issuer's other material allegations.

Defendants' Answers to the Issuer's Claims

Defendants General Mills, Inc. and General Mills Fun Group, Inc. (including Parker Brothers, Inc.) allege in their Answer and in other documents filed in court the following defenses:

(a) a general denial of the Issuer's material allegations, except that they "admit that plaintiff Christian Thee did offer a game idea to Parker sometime in 1965 or 1966" as well as in 1960, 1964 and 1969; they claim that 18 "game ideas" for "art board games" were submitted to Parker Brothers, Inc. from 1946 to 1970, prior to presentation to them of MASTERPIECE on April 14, 1970. Whether or to what extent any of these submissions included any of the similarities claimed by the Issuer is unknown at this time. Also, they allege that various similarities alleged by the Issuer may be found in other games for which copyrights or patents were issued;

(b) The Issuer fails to state a claim upon which relief can be granted;

(c) The Issuer's claims are barred by the statute of limitations;

(d) The Issuer's claims are barred by the Statute of Frauds; and

(e) The Issuer's claims are barred by the doctrine of laches.

Defendant Marvin Glass & Associates has not answered the Issuer's Amended Complaint, because of its recent motion to dismiss based on an alleged lack of jurisdiction and venue. The Issuer requested a severance of his claims against Marvin Glass & Associates and a transfer of the severed action to the federal district court in Chicago, Illinois. This request was granted on May 4, 1976. Marvin Glass & Associates can be expected to answer the Issuer's Amended Complaint within several months.

## ANTICIPATED TRIAL DATE

The Issuer has demanded a trial by jury. It is impossible at this time to predict with any substantial accuracy when the Thee Action may go to trial, if it goes to trial at all. The Judge has assigned the matter to federal Magistrate Vincent A. Catoggio for the purpose of handling matters relating to pre-trial discovery requests; setting a trial date, in consultation with the Judge; determination of whether any settlement is possible; and for other purposes. The Issuer's attorney of record anticipates that the matter will be tried in late 1976 or early 1977, but this is only a guess, based on factors beyond the control of the Issuer or his attorney of record. Of course, there is no assurance that any of the issues raised by the Issuer will be entitled to be tried. None of the parties have made any motions for summary judgment, the customary procedure for determining whether there are any triable issues.

ATTORNEYS FOR THE PARTIES TO THE THEE ACTION

Carl E. Person, of 132 Nassau Street, New York, New York 10038 is the Issuer's attorney of record in the Thee Action. He is experienced in antitrust litigation but not in conducting trials of any kind. Mr. Person is a 1962 graduate of Harvard Law School, and has been a member of the bar of the State of New York since 1962. He has been practicing law as an individual practitioner from 1969 to the present, including law relating to public offerings of securities, and has been practicing as a litigating attorney from 1970 to the present. Mr. Person has agreed to represent Mr. Thee on a wholly contingent basis of 35% of the Issuer's recovery, by settlement, judgment or otherwise, and Mr. Person has agreed, with the Issuer's prior written consent, to share 1/3rd of his contingent fee with Richard J. Prentiss, Jr., Esq., who is assisting Mr. Person in the Thee Action. Mr. Person and Mr. Prentiss have agreed to a division of the 35% contingent legal fee with Chicago attorney Zalosh, as described below. Mr. Person is co-attorney of record together with Chicago attorney Zalosh in the severed action transferred to Chicago against defendant Marvin Glass & Associates. Mr. Person has never before been the attorney of record for any client who sold shares in his lawsuit to investors. Accordingly, Mr. Person has no "track record" in this type of investment offering.

Richard J. Prentiss, Jr., Esq., of 35 E. 72nd Street, New York, New York 10021, advised the Issuer in connection with his claims prior to commencement of the action, and brought the Issuer to Mr. Person for possible representation. Mr. Prentiss is assisting Mr. Person in prosecution of the Thee Action. Mr. Prentiss specializes in corporate and tax law, and has limited litigation and trial experience. Mr. Prentiss is a 1956 graduate of New York Law School, and has been a member of the bar of the State of New York since 1957. He has been practicing law as an individual practitioner from 1957 to the present, and has been practicing corporate and tax law from 1968 to the present. Mr. Prentiss is to receive 1/3rd of the 35% contingent fee payable to Mr. Person, subject to the agreement for division of the legal fee with Chicago attorney Zalosh, as described below.

Harry H. Zalosh, of 134 North LaSalle Street, Chicago, Illinois 60602, is co-attorney of record for the Issuer in his severed action in Chicago against Marvin Glass & Associates and is Chicago attorney for the Issuer in connection with local discovery and other matters relating to the other part of the Thee Action. He was retained by Mr. Person on June 7, 1976. Mr. Zalosh is a general practitioner practicing alone, with general litigation and trial experience. Mr. Zalosh is a 1949 graduate of DePaul University School of Law and has been a member of the Illinois Bar since 1949. He has been practicing law as an individual practitioner from 1949 to the present.

Mr. Zalosh will receive a contingent legal fee computed at twice the hourly rate of $60 for his services and twice the regular hourly rate of any of his associate attorneys or paralegals (hereinafter, the "Contingent Time Charges") payable solely out of any contingent legal fees received by attorneys Person and Prentiss in either of the two actions. Mr. Zalosh's Contingent Time Charges will be limited to 40% of the 35% contingent legal fee payable to Messrs. Person and Prentiss in the Chicago action and to 25% of the 35% contingent legal fee payable to Messrs. Person and Prentiss in the Brooklyn action (so that Mr. Zalosh may look to the whole Thee Action for payment of his Contingent Time Charges, limited, however, by the 40% and 25% limitations). In any event, Mr. Zalosh's Contingent Time Charges will be deemed to be $2,500 in the event his actual Contingent Time Charges (at the doubled rate) do not amount to as much as $2,500.

Messrs. Person and Prentiss and the Issuer have the option to pay all or part of Mr. Zalosh's contingent legal fee for his legal services at the $60 rate (as to his services) or regular (non-doubled) rate described above, and payment of such non-doubled rate will extinguish to such extent the contingent fee at the doubled rate otherwise payable to him. However, Mr. Zalosh has the option to remain in whole or in part on the contingent fee arrangement (involving the doubled rate) and may refuse any such offer to pay him on a non-contingent basis. Mr. Zalosh has agreed that he will in no way participate in or give his approval to this offering or sale.

Mr. Zalosh may withdraw as co-attorney of record by giving the Issuer and Mr. Person 2 weeks' written notice and by delivering his files to plaintiff or a lawyer designated by the Issuer or attorney Person, and the Issuer and Mr. Person have agreed to facilitate any such withdrawal by Mr. Zalosh by the filing of appropriate consents or notices of substitution. In the event of any such withdrawal by Mr. Zalosh, he will no longer represent the Issuer in any part of the Thee Action and all Contingent Time Charges will cease to accrue as of such withdrawal date, and such accrued amount of his Contingent Time Charges and the Contingent Time Charges to be accrued by his successor attorney will be paid to Mr. Zalosh and such successor (under the agreement with Mr. Zalosh or a comparable agreement) on a pro rata basis in accordance with respective accrued Contingent Time Charges. Such apportionment shall be made as to the $2,500 minimum as well.

Defendants General Mills, Inc. and General Mills Fun Group, Inc. (including Parker Brothers, Inc.) are represented by the well-established law firm Davis Polk & Wardwell, 1 The Chase Manhattan Plaza, New York, New York 10005, consisting of approximately 47 partners, 100 associate attorneys and an unknown number of legal assistants. Davis Polk & Wardwell appears to have a substantial amount of experience defending actions for various defendants comparable to the Thee Action.

Defendant Marvin Glass & Associates is represented in Chicago, Illinois by Coffee & Sweeney, 20 North Wacker Drive, Chicago, Illinois 60606, who appear to represent Marvin Glass & Associates on a regular basis, and therefore may be considered highly specialized in the type of action brought by the Issuer. This law firm has approximately 3 partners, 1 associate attorney and no legal assistants. A Mr. Coffee is a partner in Marvin Glass & Associates.

Also, Marvin Glass & Associates is represented in New York by Kane, Dalsimer, Kane, Sullivan and Kurucz, of 420 Lexington Avenue, New York, New York 10017, who specialize in patent and copyright litigation and have represented Marvin Glass & Associates in prior years. This law firm consists of about 13 attorneys and no legal assistants. This firm appears to be highly experienced in handling actions similar to the type brought by the Issuer.

During 1970, after learning about the publication of MASTERPIECE, the Issuer was told by a friend employed as a secretary by a New York law firm specializing in patent and copyright law to seek legal advice from the law firm concerning any remedies the Issuer may have against Parker Brothers, Inc. and Marvin Glass & Associates. The Issuer was advised by an attorney at the firm

that he should not pursue his claims because they had little or no merit, in the apparent opinion of such attorney, and because of the strength of his intended opponents. The attorney did not advise the Issuer that the law firm represented Marvin Glass & Associates during the recent past. The Issuer only became aware of this alleged conflict of interest after commencement of this action. The Issuer failed to commence his action against the defendants for about 5 years after publication of MASTERPIECE because of the advice of this attorney. The appropriate New York statute of limitations seems to bar any recovery on grounds of alleged malpractice or non-disclosed conflict of interest. The law firm claims it is unaware that the claimed incident ever took place, and the Issuer is unable to recall the name of the attorney who gave the advice.

## PRIOR LITIGATION EXPENSES

To date, the total out-of-pocket expenses incurred in prosecuting the Thee Action amount to about $500. This does not include the value of legal and paralegal time employed in the Thee Action or the value of the time spent by the Issuer and his former business manager, Michael Cobb. Income from the U. S. Government securities purchased with the proceeds of this offering will be used in part to reimburse counsel for their unreimbursed out-of-pocket expenses.

## USE OF PROCEEDS

Carl E. Person, as Trustee for the Thee Action and attorney of record for the Issuer, will invest all or substantially all of the gross proceeds of this offering in short-term U. S. Government securities (i.e., with maturities not exceeding 1 year) and use the income from these U. S. Government securities (together with any proceeds of any interim settlement not used to pay the 25% contingent compound annual interest to shareholders) in furtherance of the Thee Action. (As to use of the proceeds of any interim settlement, see "Division of Proceeds of any Recovery", page 19 .) The standard to be employed by the Trustee is "in the best interests of pursuing the Issuer's claims in the Thee Action, but in the sole discretion of the Trustee together with the Issuer's approval". It is expected that the gross proceeds of the offering ($500,000 if all shares are sold) can produce income in the trust of up to $30,000 to $40,000 per year, approximately, depending on the rate of interest earned by short-term U. S. Government securities. If fewer than all of the offered shares are sold, the income would be reduced proportionally. None of the income from the trust will be used to pay any legal fees to either Mr. Person or Mr. Prentiss, the Issuer's attorneys. The income from the trust will be used to pay the following litigation and related expenses:

(a) costs for transcripts of depositions (i.e., pre-trial examinations of witnesses under oath, recorded and transcribed by a "court reporter" or by a paralegal (i.e., legal assistant) or other person employed by the Issuer's attorney of record);

(b) salary of a full or part-time paralegal, to assist the Issuer's attorney of record by performance of tasks which can be done by a non-lawyer, under the direction and supervision of the attorney; this expense is expected to amount to no more than $13,000 per year (including payroll taxes); the paralegal so employed should be able to perform, at no extra cost, much if not all of the transcribing of testimony taken pursuant to depositions described in the preceding paragraph (a);

(c) photocopying expenses; the Issuer's attorney of record will charge the Issuer $.15 per copy, which is higher than the attorney's out-of-pocket expense and includes some of the attorney's overhead costs; such amount is comparable to charges of major law firms in New York City;

(d) fees to expert witnesses for preparation and testimony (unless they are engaged by the Issuer on a contingent-fee basis (see "Possible Dilution of Proceeds of any Recovery", page 22, and "Material Litigation and Liens", page 24 );

(e) mileage and attendance fees for non-expert witnesses;

(f) filing fees;

(g) investigative expenses;

(h) additional litigation expenses, including possible fees to local attorney Harry H. Zalosh to maintain and try the Issuer's claims against defendant Marvin Glass & Associates in Chicago, Illinois (see "Attorneys for the Parties to the Thee Action");

(i) postage; printing; telephone; telegraph; office supplies; and other miscellaneous litigation expenses;

(j) travel expenses, including reimbursement for automobile travel at the rate of $.15 per mile;

(k) data processing expenses, if necessary, including an allocable charge for rental of any terminals or for any minimum monthly charges;

(l) messenger expenses;

(m) secretarial and proofreading expenses, charged at the average rate charged by major law firms in New York City;

(n) out-of-pocket expenses relating to any appeals;

(o) taxable costs and any other costs which may be assessed against the Issuer or his attorney of record in the event of any ultimate loss of the Thee Action or any loss of any appeals or motions which the court may characterize as "frivolous" or "meritless";

(p) costs to purchase transcripts of hearings and trials;

(q) office furniture and equipment solely for use in the Thee Action (estimated to cost less than $500);

(r) proportionate costs of any furniture or equipment rented or leased, or periodic data processing time charges or any data processing programming or data-bank costs incurred by the Issuer's attorney of record and used in whole or in part in furtherance of the Thee Action, such as (i) terminals for data processing; (ii) word-processing equipment; (iii) computerized typesetting equipment; (iv) computer time-sharing costs paid per month or other period; (v) costs of building a legal files or forms data bank; and (vi) the proportionate amount of an assumed rental or lease expense at competitive rates as to any such furniture or equipment owned or purchased by the Issuer (estimated at $3,000 per year); the purpose of these expenses is to enable the Issuer's attorney of record to have his various clients share in the costs which must be incurred to enable the clients to benefit from use of data processing techniques in litigation, which should lower the number of man hours required as well as reduce the length of time needed to go through pre-trial procedures and prepare the case for any trials;

(s) reimbursement of prior unreimbursed litigation expenses (estimated at $500) advanced by the Issuer's attorneys;

(t) payment or reimbursement to the Issuer of any lititgation expenses incurred subsequent the the date of this Offering Circular, with the Trustee's approval;

(u) expenses in connection with this offering (estimated at $3,000);

(v) expenses in transferring shares and issuing reports to shareholders and others (estimated at $500 per year);

(w) expenses in administering the trust, including annual judicial accountings (estimated at $100 per year);

(x) "entertainment" expenses (such as dinners, luncheons and beverages in moderation) inevitably expected to be incurred by investigators or the Issuer's attorneys or their employees in identifying, locating and interviewing prospective witnesses with respect to the industry-wide conspiracy to "steal" game ideas from independent game designers and developers, as alleged by the Issuer;

(y) premiums to purchase and maintain a fidelity bond covering the Trustee;

(z) payment of any applicable income or other taxes; and

(aa) to offset market fluctuations in the value of the U. S. Government securities purchased by the Trustee, in the event of any redemptions at less than $5.00 per share, in the Trustee's discretion (see "Redemption by Shareholders", page 18 );

The approximate ount of expense to be incurred each year in each category of expense set for ove cannot be estimated reasonably other than as set forth above. The mos stantial expenses are expected to be the expenses described above in paragra (a), (b), (d), (g), (h), (n), (p), (r), (u) and (aa).

The principal of the trust (i.e., the "Trust Corpus"), consisting of the gross proceeds of this offering, will be held in trust by Carl E. Person, as the Trustee, and used solely for the purchase of short-term U. S. Government securities and to redeem or call shares in accordance with the provisions set forth in "Redemption by Shareholders", page 18 , and "Calls by the Issuer", page 19 . The income from the Trust Corpus will be used in accordance with paragraphs (a) through (aa) above.

See "Fidelity Bonding of the Trustee", page 21 , "Reports to Shareholders by the Trustee", page 21 , and "Annual Judicial Accounting by the Trustee", page 21 , for information about (1) the fidelity bond covering the Trustee; (2) periodic reports by the Trustee on trust expenditures, calls and redemptions; and (3) annual judicial accountings by the Trustee.

## INTERESTS IN ISSUER'S CLAIMS IN THE THEE ACTION

The Issuer, Christian Thee, has a 100% interest in his claims underlying the Thee Action, subject to:

(a) the interests offered by this Offering Circular;

(b) the 35% contingent fee agreement with attorneys Person and Prentiss, as described in "Attorneys for the Parties in the Thee Action", page 13 ;

(c) payment of the expenses described in paragraphs (a) through (aa) under "Use of Proceeds", page 15 ; these expenses will be deducted from the gross proceeds of any recovery by settlement or otherwise to the extent income from the trust is insufficient to pay or reimburse for such expenses; and

(d) any contingent fees to be paid to expert witnesses who may be employed by the Issuer to prepare and testify on a contingent-fee basis and amounts payable with respect to other possible financings of the expenses of the Thee Action, as limited by this Offering Circular (see "Possible Dilution of Proceeds of any Recovery", page 22 , and "Material Litigation and Liens", page 24 ).

## DESCRIPTION OF THE SECURITIES

### Redemption by Shareholders

Each share being offered has a $5.00 par value and may be redeemed upon 7 days' written notice to the Issuer, together with a tender of the certificate(s) for the shares being redeemed with the redemption form on the back of each certificate properly endorsed by the shareholder of record and with the signature of the shareholder guaranteed by a commercial bank or a member firm of the New York Stock Exchange. Upon any such redemption by a shareholder, the Trustee will pay to the shareholder the redemption price of $5.00 or the net asset value per share of the Trust Corpus (defined at p. 18 ), whichever is less. The shareholder who redeems his shares will be paid less, initially, than

the $5.00 per share if the U. S. Government securities purchased by the Trustee have decreased in value as a result of market fluctuations and if there is, at the time of redemption, insufficient income on hand at the time of redemption from the trust investments to make up the difference. In the event the full $5.00 price per share is not paid as to any redemption, the amount remaining unpaid shall be paid before any other payments out of any proceeds of the Thee Action or, at the sole discretion of the Trustee and with the Issuer's consent, out of income received by the Trustee after the redemption on the Trust Corpus. In the event the net asset value of the Trust Corpus exceeds $5.00 per share, the excess over $5.00 shall not be paid on any redemptions at such time but shall remain as part of the Trust Corpus. The shareholder will forfeit all of his interest in any of the contingent compound annual interest of 25% otherwise payable on such shares being redeemed.

Calls by the Issuer

At any time the Issuer may call any number or all of the outstanding shares for redemption, upon 7 days' written notice to the affected shareholders. Shares will be called, if at all, according to lot, in the event fewer than all outstanding shares are being called at any one time. Any such call shall be at the net asset value per share of the Trust Corpus, and no further contingent compound annual interest will accrue as to such shares called after the date of payment on the call. In the event the full $5.00 par value per share is not paid as to any call, the amount remaining unpaid shall be paid before any other payments out of any proceeds of the Thee Action or, at the sole discretion of the Trustee and with the Issuer's consent, out of income from the U. S. Government securities received by the Trustee before the effective date of the redemption. In the event the net asset value per share exceeds $5.00, such excess over $5.00 shall be paid to shareholders as part of the call price. Accumulated income of the Trust Corpus does not constitute any part of the net asset value per share in connection with any redemptions or calls. The accrued contingent annual interest from the date of this Offering Circular to the effective date of the call (less any of the contingent interest previously paid from any settlements or judgments involving fewer than all of the remaining defendants) shall not be extinguished by any such call, and the shareholder's only interest in his shares after the effective date of the call shall be such accrued contingent annual interest, payable in accordance with the terms of this Offering Circular as to shares not so called.

Division of Proceeds of any Recovery

In the event fewer than all of the defendants make a payment to the Issuer by settlement, payment of judgment or otherwise, the proceeds shall be used, in the following order of priority, to pay

(i) any part of the $5.00 par value remaining unpaid as to any redemptions;

(ii) any outstanding litigation expenses not paid out of trust income;

(iii) all accrued contingent compound annual interest not paid to shareholders prior to the Trustee's receipt of such proceeds; and

(iv) any remaining proceeds shall be held by the Trustee for investment in U. S. Government securities as a separate and distinct trust the principal and interest of which are to be used

(a) for paying any part of the $5.00 par value not previously paid on any redemptions;

(b) to pay for litigation expenses; and

(c) at the Trustee's discretion and with the Issuer's consent, for use in calling shares.

No part of the principal or interest of this separate and distinct trust (the "Interim Settlement Proceeds Trust") shall be used for making payment of any contingent compound annual interest to shareholders.

In the event of a settlement or final judgment terminating the entire Thee Action and after receipt of any proceeds by the Trustee,

(a) the Trustee shall pay to the shareholders, in complete distribution of the Trust Corpus, the net asset value per share of the Trust Corpus after liquidation by the Trustee; and

(b) the Trustee shall use any proceeds of the Thee Action together with any accumulated income in the Trust Corpus and any principal and accumulated in any Interim Settlement Proceeds Trust in the following order and priority: To pay:

(i) any part of the $5.00 par value remaining unpaid as to any prior redemptions or calls and as to the liquidation and distribution described in paragraph (a) above;

(ii) any outstanding litigation expenses not paid out of trust income;

(iii) all unpaid contingent compound annual interest of 25% from the date of the Offering Circular to the date of such final payment to each of the holders of outstanding shares (including shares which were called by the Trustee); and

(iv) the remaining assets, if any, to the Issuer and his attorneys, in the proportions described in "Attorneys for the Parties to the Thee Action", page 13 .

Any amounts payable to shareholders who cannot be located by the Trustee shall be retained by the Trustee until turned over by the Trustee to the appropriate state officials under applicable escheat or abandoned property laws.

Filing of UCC-1 Financing Statements

Form UCC-1 Financing Statements have been filed by the Trustee as the Secured Party on behalf of the shareholders with the Department of State, Uniform Commercial Code Section, P. O. Box 7021, Albany, N.Y. 12225 and with the City Register, Uniform Commercial Code Division, Room 1, Municipal Building, Brooklyn, N.Y. 11201. These Financing Statements refer to the interests being sold to investors under this Offering Circular, and state that the Trustee is the Secured Party acting on behalf of the shareholders. The Trustee will act for the shareholders to receive on their behalf their portion of the proceeds of the Thee Action and no shareholder shall have any right to receive any of the

proceeds directly or from any person other than the Trustee. The shareholder irrevocably waives any right he may have to pursue independently his share in the Issuer's claims and further waives any right he may otherwise have to receive payment on his share in the Issuer's claims directly or other than from the Trustee. The power granted to the Trustee in this paragraph to receive the shareholders' portion of the proceeds and to pay the proceeds to the shareholders is a power coupled with an interest and is irrevocable. The purpose of this restriction is to ensure that no person other than the Issuer has any say whatever in determining how the claims are to be pursued and whether any of the claims should be settled, abandoned or otherwise treated.

No Control by Shareholders

None of the shareholders shall have any right to control any part of the Thee Action, and shareholders will not be consulted as a matter of right as to any action taken or to be taken by the Issuer or his attorneys in connection with prosecuting, settling, abandoning or otherwise dealing with the Thee Action. The shareholders have no voice, are to remain inactive and are totally dependent upon the Issuer and his attorneys in all matters relating to prosecution, settlement or abandonment of the Issuer's claims against the defendants.

Fidelity Bonding of the Trustee

The Trustee, before accepting any of the proceeds of the offering, shall be bonded with a fidelity bond protecting the shareholders and all others having any interest in any of the assets held in trust by the Trustee. Such bond shall be in an amount equal to no less than 110% of the assets held in trust at any time.

Reports to Shareholders by the Trustee

The Trustee shall report monthly to the shareholders and financial press on the developments in the Thee Action and the expenditures made to date, with the Trustee's absolute right to avoid specificity when specificity could, in the opinion of the Issuer's attorney of record, be detrimental to the Issuer or the Thee Action. Also, the Trustee shall report on the number of shares outstanding and the number of redemptions and calls, the price at which the calls and redemptions, if any were made, and the net asset value of the Trust Corpus.

Annual Judicial Accounting by the Trustee

The Trustee shall, on an annual basis, make application to the New York courts for the settlement of the Trustee's accounts for the preceding year, with the same right to avoid specificity. Upon the Trustee's final judicial accounting and report to the shareholders, upon liquidation and termination of the trust, the Trustee shall adhere to the normal disclosure standards for trust accountings, in absence of cause shown to the court.

Possible Dilution of Proceeds of any Recovery

The proceeds of any settlement or other recovery by judgment or otherwise may be diluted by any agreement to retain expert witnesses on a contingent-fee basis. (See "Material Litigation and Liens", page 24 ). Also, the proceeds of any settlement or other recovery may be diluted by any additional financings. Such possibility of dilution of proceeds of the Thee Action is limited to 50%, as explained immediately hereinafter. The priority in payment to the holders of shares offered hereby shall be shared on a pro rata basis with persons who would receive payments of any kind out of the proceeds of the Thee Action not exceeding 50% of the aggregate amount of contingent compound annual interest payable with respect to the shares offered hereby. Such payments may be made by contingent-fee agreements with expert witnesses, by sale of additional shares to finance the action or otherwise. Thus, a maximum of 50% of the amount of contingent interest payable with respect to all of the shares offered hereby may be sharing the shareholders' priority to receive payments hereunder. Any shares redeemed or called could be reissued by the Issuer, in compliance with applicable securities laws, as if the shares had never been redeemed or called for purposes of being entitled to share in the priority of payment to be made to holders of shares which were never called or redeemed. Such priority to reissued shares would not extend to any interest accrued for the period when the shares were redeemed or called, before reissuance. Upon any reissuance, the shares will have the same features and rights granted with respect to the shares offered by this Offering Circular, but only to the extent such reissued shares do not exceed the terms of the shares offered hereunder.

Waiver of Rights to Accurate Disclosure

By purchase of the offered shares, the shareholder waives any rights he or his heirs, successors, administrators, executors or assigns may have to the extent such waiver is permitted by law concerning completeness and accuracy of the Issuer's description of the Thee Action in this Offering Circular or in subsequent reports. It may be virtually impossible to describe completely and accurately all material aspects to a lawsuit in litigation, and any alleged facts omitted or inaccurately described could well be determinative of the outcome of the action. Facts which seem provable as of the date of this Offering Circular may well become non-provable at trial for any number of reasons, including the death or disability of a witness, change in testimony by a witness, discovery of additional evidence, disbelief of evidence, inadmissibility of evidence, change in legal theories, and change in trial strategy, among other reasons. Whether this waiver would be upheld to any extent by the courts is unknown at this time.

Transfer Agent

Carl E. Person, Trustee for the Thee Action and attorney for the Issuer in the Thee Action, will act as Transfer Agent for the shares being offered hereby. The Trustee will pay for the out-of-pocket expenses of share transfers out of the income earned on the U. S. Government securities purchased with the gross proceeds of the offering. Any share-transfer expenses not so covered will be paid by the Issuer as an expense of the litigation. Mr. Person will not receive any fees for his services as Transfer Agent.

Reports to Shareholders and Financial Press

Carl E. Person, as Trustee and as attorney for the Issuer, will prepare monthly reports on the Thee Action, expenditures by the Trustee, any calls or redemptions, the prices paid on such calls and redemptions, and net asset value per share, and the amount of shares outstanding. Copies of the reports will be mailed to shareholders of record and to the financial press. Shareholders will be advised of material developments in the Thee Action through these reports.

## SETTLEMENT PROCEEDINGS

To date, there have been no settlement discussions of any kind in the Thee Action. Any settlement discussions which a defendant requests be kept in confidence will not be disclosed in the reports to shareholders. Also, the terms of any non-confidential settlement offers not accepted by the Issuer will not be disclosed, unless the Issuer deems disclosure in the best interests of the Thee Action and required by the applicable securities laws. The reason for any non-disclosure at the discretion of the Issuer and his attorney of record is to prevent the defendants from making frequent "nuisance-value" offers to the Issuer which would have a tendency of undermining the market value of the shares, if disclosed to shareholders and other members of the public. The Issuer and his attorney of record take the position that disclosure of "offers" could be a violation of the rules and statutes prohibiting the manipulation of the market prices for securities or using any scheme or artifice to defraud.

## PLAN OF DISTRIBUTION

The Issuer plans to make the offering by himself, without the aid of any employees, agents, salesmen, brokers, dealers or underwriters. The offering is to be made on a straight best-efforts basis, so that as few as 100 or as many as 100,000 shares may be sold. Shares will be sold in minimum lots of 100 shares. All of the shares will be offered to individuals or partnerships who are residents of New York State, but none of such individuals or partnerships may be in the business of adjusting claims or collecting debts. Purchases by (1) persons in the business of adjusting claims or collecting debts; or (2) corporations or associations may be prohibited by § 489 of the New York Judiciary Law (see "Material Litigation and Liens", page 24 ). Resales by shareholders will not be restricted by the Issuer, but § 489 prohibits each of the persons prohibited under paragraphs (1) and (2) above from making purchases "directly or indirectly, ... by or through its officers, agents or employees". Also, applicable securities laws prohibit or may prohibit sales to persons who are buying on behalf of persons who themselves are ineligible to buy the offered shares.

## CERTAIN TRANSACTIONS

Carl E. Person, attorney for the Issuer in the Thee Action and the Trustee for the Thee Action, has advanced about $500 on behalf of the Issuer. Mr. Person will be reimbursed for this advance out of any income from the U. S. Government securities to be purchased with the proceeds of this offering. Also, Mr. Person and Richard J. Prentiss, Jr., as attorneys for the Issuer, have agreed with the Issuer to represent the Issuer in this action (Mr. Person as sole attorney of record in the Brooklyn action and co-attorney of record in

the Chicago action) for an aggregate contingent fee of 35%, to be divided 2/3rds for Mr. Person and 1/3rd for Mr. Prentiss. Part of the 35% contingent legal fee is payable to Chicago attorney Harry H. Zalosh (see "Attorneys for the Parties to the Thee Action"). Also, the litigation expenses described in paragraphs (c), (j), (k), (m), (q) and (r) under "Use of Proceeds", page 15 , include or may include a contribution to the overhead of the Issuer's attorney of record.

## MATERIAL LITIGATION AND LIENS

There are no material lawsuits of any kind pending or threatened against the Issuer relating in any way to the Thee Action. There are no liens of any kind actual or threatened affecting the proceeds of any settlement or recovery by judgment or otherwise in the Thee Action other than the lien of Carl E. Person, attorney of record, relating to his 35% contingent fee, which lien is junior to the interests of the shares being offered hereby. (See "Attorneys for the Parties to the Thee Action", page 13.) See "Filing of UCC-1 Financing Statements", page 20 , for a description of the filing of Financing Statements in New York State to protect the interests of the holders of the shares offered hereby and others interested in the trust from any subsequent attachments or liens on any of the proceeds of the Action.

On September 8, 1975, Mr. Person as plaintiff filed an action against The Association of the Bar of the City of New York, the Appellate Divisions of the Supreme Court of the State of New York for the First and Second Departments and the Attorney General of New York State to establish the right of the Issuer's attorney of record and his various clients to sell shares in pending litigation to obtain financing for the litigation. Judge John F. Dooling ruled that shares in lawsuits could be sold without any necessary violation of New York law. It is the legal opinion of Carl E. Person, the Issuer's attorney of record, that the present offering as described in this Offering Circular conforms to the requirements of New York law. (See "Legal Opinions".)

Also, in the same action, the Issuer's attorney of record sought to have the court declare unconstitutional a Bar Association Disciplinary Rule, DR 7-109C, which prohibits attorneys from using expert witnesses on a contingent-fee basis. Judge Dooling indicated in his written decision that the Disciplinary Rule may be discriminatory and invalid. In the event the Disciplinary Rule is declared invalid, the Issuer may decide to use and compensate experts for their preparation and trial testimony by paying them a reasonable contingent fee, particularly if the interest earned on the U. S. Government securities purchased with the proceeds of this offering are insufficient, after payment of other litigation expenses, to pay for expert witnesses on a non-contingent basis. No offers of any kind to any expert witnesses have been made by the Issuer or his attorneys. The Person action was commenced in the United States District Court for the Eastern District of New York under Index No. 75 C 1473.

## LEGAL OPINIONS

Carl E. Person will pass upon securities matters for the Issuer. (See "Attorneys for the Parties to the Thee Action" and "Material Litigation and Liens".)

## TAX CONSEQUENCES TO SHAREHOLDERS

The Issuer's attorneys are not able at this time to state whether any capital gains obtained by shareholders on any resales of the shares purchased by them under this Offering Circular would be entitled to capital gains treatment. In the event the Issuer's attorneys obtain a ruling from the Internal Revenue Service on this issue, they will advise the shareholders in a periodic report.

It is assumed that any income from the trust not expended for purposes of the Thee Action would be taxed. Any such taxes would be paid by the Trustee out of the unused income of the Trust. The Trustee does not envision that there will be any substantial amount of unused income, and to the extent there could be any substantial unused income, the Issuer may decide to call shares for redemption. (See "Calls by the Issuer", page 19 .)

The contingent compound annual interest of 25% is being compounded without any deduction for taxes because of the contingent feature. Accordingly, the tax consequences to shareholders are different from the consequences to persons with money on deposit in a savings account. For such savers, their money does not compound the full amount of interest or dividends paid, because of the requirement of payment of income taxes. The amount compounded for the savers is the net amount after payment of applicable income taxes on the interest or dividends.

## AVAILABILITY OF DOCUMENTS AND ADDITIONAL INFORMATION

The Issuer has filed with the New York Regional Office of the Securities and Exchange Commission a Notification on Form 1-A under Regulation A of the General Rules and Regulations of the Securities and Exchange Commission, with respect to the 100,000 shares offered hereby. This Offering Circular does not contain all of the information set forth in the Notification, as permitted by the General Rules and Regulations. For further information, reference is made to the Notification on Form 1-A, including the exhibits filed or incorporated as a part hereof.

Information about the Thee Action can be obtained from court records (1) in the United States District Court located at 225 Cadman Plaza East, Brooklyn, N.Y. 11201 under Index No. 75 C 1554 (Judge Henry Bramwell); and (2) in the United States District Court for the Northern District of Illinois, Eastern Division, located at 219 South Dearborn Street, Chicago, Illinois 60604, under Index No. 76 C 1785.

## NO FINANCIAL STATEMENTS

Because of the nature of the shares being offered by this Offering Circular, the Issuer has no financial statements to publish in connection with the offered securities. See "Prior Litigation Expenses", page 15 , and "Use of Proceeds", page 15 , for an estimate or prior litigation expenses and an estimate, to the extent reasonably possible, of future litigation expenses in the continued prosecution of the Thee Action.

EXHIBIT B

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This advertisement is neither an offer to sell nor a solicitation of an offer to buy any of these securities. The offer is made only by the Offering Circular.

NEW ISSUE

100,000 Shares, with Maximum Contingent Compound Interest of 25% Per Year; $5.00 Par Value; Redeemable and Callable; in the Lawsuit

CHRISTIAN THEE v. GENERAL MILLS, INC.,
GENERAL MILLS FUN GROUP, INC. (formerly named PARKER BROTHERS, INC.) and
MARVIN GLASS & ASSOCIATES

PRICE: $5.00 PER SHARE

Copies of the Offering Circular may be obtained from the undersigned only in states in which the undersigned is qualified to act and in which the Offering may be legally distributed.

CHRISTIAN THEE
76 State Street
Brooklyn, N.Y. 11201

(212) 834-1513

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"B"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| | | |
|---|---|---|
| CARL E. PERSON, | : | 76 C 1217 (JFD) |
| Plaintiff, | : | NOTICE OF MOTION |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

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TO: New York Post Corporation
210 South Street
New York, N.Y. 10002

PLEASE TAKE NOTICE that, upon the complaint, the exhibits thereto, and annexed affidavits of Carl E. Person, sworn to July 2, 1976, Ira J. Ehrlich, sworn to June 30, 1976, and Christian Thee, sworn to June 29, 1976, the plaintiff will move this Court, before Honorable John F. Dooling, Jr., United States District Judge, on July 12, 1976 at 4:15 o'clock p.m., or as soon thereafter as counsel can be heard, at the United States Courthouse, Courtroom No. 8, 225 Cadman Plaza East, Brooklyn, N.Y., for a preliminary injunction under Rule 65(a), F.R.Civ.P., enjoining the New York Post Corporation from publishing any tombstone advertising with respect to any registered or Regulation A public offerings of securities unless the New York Post Corporation remains willing to publish tombstone advertising, on a non-discriminatory basis, with respect to all clients of the plaintiff or for plaintiff himself (subject to prior satisfactory payment arrangements), and such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 2, 1976

Carl E. Person, pro se
132 Nassau Street
New York, N.Y. 10038

(212) 349-4616

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| | | |
|---|---|---|
| CARL E. PERSON, | : | 76 C 1217 (JFD) |
| Plaintiff, | : | PLAINTIFF'S AFFIDAVIT |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

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STATE OF NEW YORK )
; ss.:
COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, deposes and says:

1. I am the plaintiff in the above action, am fully familiar with the facts stated herein, and make this affidavit in support of my motion for a preliminary injunction, under Rule 65(a), F.R.Civ.P.

2. I am an antitrust and business-oriented civil rights litigator, and use this type of litigation to express myself politically, in association with various clients, including a Christian Thee, and others, including persons who may assist in the financing of an action by Mr. Thee.

3. On behalf of Mr. Thee and in furtherance of my right of political self-expression, among other reasons, I (as attorney for Mr. Thee) commenced an action against General Mills, Inc. ("GM"), General Mills Fun Group, Inc., formerly known as Parker Brothers, Inc. ("GMFG") and Marvin Glass & Associates ("Glass"), referred to hereinafter as the "Thee Action", alleging violations of the Sherman Act, commonlaw copyright infringement, commercial piracy, fraud, breach of contract, breach of confidential or other fiduciary relationship and

other bases for liability, in this District Court for the Eastern District of New York, under Index No. 75 C 1554 (HB) on September 22, 1975 (as amended September 29, 1975).

4. Shortly before, on September 8, 1975, I as plaintiff commenced an action against The Association of the Bar of the City of New York (the "Bar Association"), the New York State Attorney General and the Appellate Divisions for the 1st and 2nd Departments of the New York State Supreme Court (the "Bar Association Action") alleging that the defendants therein had conspired with major corporations in the United States and various law firms representing them (generally, the law firms in control of the Bar Association and other bar associations) to prevent plaintiff and his clients from enforcing their rights under the federal antitrust laws. In ¶ 9 of my complaint in the Bar Association Action, I alleged that the co-conspirators included:

"(a) American Bar Association (founded in 1878);

"(b) The New York State Bar Association (founded in 1876);

"(c) Appellate Divisions of the Supreme Court of New York State for the First, Second, Third and Fourth Departments;

"(d) Court of Appeals of New York State;

"(e) Other bar associations and courts in New York State or throughout the United States which have adopted or are enforcing laws or rules which prohibit clients pursuing antitrust claims and/or their attorneys working on a contingent-fee basis from obtaining the money to pay the litigation expenses by selling a percentage of their respective interests in the antitrust claims to private or public investors and from employing expert witnesses to testify at the trial on a contingent-fee basis;

"(f) Attorneys in the Eastern or Southern Districts of New York, elsewhere in New York State or elsewhere in the United States, including members of bar associations, who have participated in the adoption or enforcement of laws or rules which prohibit the activities described in subparagraph (e) above; and

"(g) Clients of any of the attorneys described in the preceding subparagraph (f) who give encouragement to the attorneys in their efforts to prevent the activities described in subparagraph (e) above for the purpose of making it more difficult if not impossible for small businesses to enforce any of their antitrust claims against any of these clients."

5. Affiant is attorney for the plaintiffs in five actions generally known as National Auto Brokers Corp., et al. v. General Motors Corporation, et al., 70 Civ. 5421A, 70 Civ. 5421B, 70 Civ. 5421C, 70 Civ. 5421D and an action transferred from the Eastern to the Southern District of New York formerly having EDNY Index No. 74 C 1484 (the "Nabcor Action"). In this Nabcor Action, General Motors Corporation and 3 other "General Motors defendants" are being represented by Messrs. Paul, Weiss, Rifkind, Wharton & Garrison, a top partner of which (Adrian W. DeWind) is now President of the Bar Association. Paul, Weiss, Rifkind, Wharton & Garrison have represented defendant New York Post Corporation in the past, and may well represent defendant in this action, which is consistent with the conspiracy alleged by affiant here as well as in the Bar Association Action and the Nabcor Action.

6. Subsequently, this Court (Hon. John F. Dooling, Jr.) held that under New York law it was not necessarily illegal for plaintiff's clients to offer shares in their lawsuits to raise money to cover out-of-pocket expenses of the litigation, or for plaintiff to assist, as attorney, in connection with the offering of securities. A copy of the Memorandum and Order, dated March 24, 1976, is annexed hereto as Exhibit A.

7. Subsequently, on May 14, 1976, I filed on behalf of Mr. Thee, the Issuer, under Regulation A of the Securities Act of 1933, a Form 1-A Notification and proposed Offering Circular. At the request or suggestion of the S.E.C., plaintiff filed an amended Notification and Offering Circular.

Thereafter, the S.E.C. declared that the Regulation A offering was effective for sale. A copy of the S.E.C. letter order, dated June 22, 1976, is annexed hereto as Exhibit B. A copy of the Offering Circular is annexed to the complaint here[illegible]s an exhibit.

8. On or shortly after June 22, 1976, plaintiff, on behalf of Mr. Thee, arranged for the delivery or mailing of copies of the Offering Circular and "tombstone advertisement" (also an exhibit to plaintiff's complaint) to the publishers of various newspapers serving New York City, including:

(a) New York Post;

(b) The New York Times;

(c) New York Law Journal;

(d) The Wall Street Journal (Eastern Edition);

(e) Christian Science Monitor;

(f) Westchester-Rockland Newspapers, Inc., consisting of 10-11 newspapers in upstate New York;

(g) Staten Island Advance; and

(h) New York Daily News.

9. Each of the above newspapers rejected the tombstone advertisement for publication (with the possible exception of the Westchester-Rockland Newspapers, a defendant in the Nabcor Action, which said it would get back to affiant but has not yet done so; and the probable exception of the Daily News, also a defendant in the Nabcor Action, which appears willing to publish the advertisement, and has typeset the advertisement and delivered a proof to affiant, a copy of which proof is annexed hereto as Exhibit C).

10. The facts about the delivery of the Offering Circular and tombstone advertisement to defendant and defendant's refusal to publish the advertisement in the New York Post (hereinafter, the "Post"), because the

offering was "not suitable" for the readers of the Post, according to Mr. Mr. Richard Le Long of the Post, are set forth in the accompanying affidavit of my legal assistant, Ira J. Ehrlich, sworn to June 30. 1976. Two days after Mr. Ehrlich and I spoke by telephone (on June 23, 1976) about defendant's refusal to publish, I spoke by telephone with Mr. Lawrence Goldreyer of defendant's Advertising Department and, shortly thereafter, with Byron S. Greenberg, Treasurer and a Director of defendant.

11. I spoke with Mr. Goldreyer during the morning of June 25th, and Mr. Goldreyer said that he recalled the submitted tombstone advertisement; that the advertisement was passed through to defendant's Advertising Acceptability Committee, which refused the advertisement; that the Committee gave no reason, except that the advertisement was "not acceptable"; that such rejection was typical of defendant's procedures; and that this has happened with great frequency with tombstones. I stated that, as a matter of courtesy to the Post, I should speak with the Business Manager of the newspaper or the next higher person. Mr. Goldreyer said that Mr. Greenberg was defendant's Business Manager and that the next step would be the publisher (who I understand is Ms. Dorothy Schiff, as well as the Editor-in Chief - see copy of masthead annexed hereto as Exhibit D). I asked to be switched to Mr. Greenberg, and a female secretary who answered stated that Mr. Greenberg was "not available right now" and that I should call back in 5 minutes (this was at 11:33 A.M.). At 11:34 A.M., Mr. Goldreyer called back saying that he was sorry we "were cut off"; that he gave or was giving my materials to Mr. Greenberg, who will call me back; and that Mr. Greenberg was on his way to a meeting when Mr. Goldreyer called him. (This was a 30-second conversation) between affiant and Mr. Goldreyer; the earlier conversation was perhaps 2 minutes long or longer.

12. At 11:51 A.M. on June 25th, Mr. Greenberg called, telling me that he received the materials; that he glanced slightly through them; that

the Advertising Acceptability Committee of defendant found the advertisement "not acceptable"; that he supposed it was a policy not to accept offerings of "contingent interests"; that the Offering Circular made reference to certain risk factors important to investors; that defendant has rejected other tombstone advertisements; that defendant does this rejecting of advertising based on criteria; that there may be a number of aspects to such criteria; that defendant made a "judgment call" based on a review of my submitted copy, the background on it, and in the view of the Committee; and that for specific reasons the defendant believed that the advertisement was not acceptable.

13. I advised Mr. Greenberg that I'm filing suit under the Investment Advisers Act of 1940 and other statutes on the same day, to settle this tombstone refusal procedure of the New York City newspapers once and for all; and that he should tell the Committee about the forthcoming suit and see if the Committee would reconsider its decision in light of these new circumstances. Nothing was heard from defendant thereafter, and plaintiff filed his action at about 4:30 P.M. on the 25th of June, and had defendant served on the same day — serving Byron S. Greenberg in his office at 4:55 P.M.

14. No mention was made during any of the above conversations between affiant and Messrs. Goldreyer and Greenberg about the refusal being based on any credit or payment problems, and none did exist. Affiant was ready (and remains ready) to pay (on behalf of his client) for the advertisement prior to publication of the advertisement.

15. Mr. Greenberg was correct in saying that defendant does publish tombstone advertisements. Annexed as Exhibit E hereto are copies of various tombstone advertisements published by the defendant during the past few months, for the following issues:

(a) $30,000,000 ITT Financial Corporation, 11-1/4% Junior Subordinated Notes Due December 1, 1985; with 36 underwriters; published 1/12/76, p. 35;

(b) 19% "Yield" New York City General Obligation Bonds, maturing May 1, 1976, 7% Coupon, Approximate Price $79.60; advertised by Donald Sheldon & Co., Inc., NASD member; published 3/1/76, p. 35;

(c) 6,000,000 shares, at $.15 per share ($900,000 offering), $.001 par value, of Independent Silver Producers, Inc., a Nevada corporation; S. B. Cantor & Co., Inc., underwriter; published 3/5/76, p. 49;

(d) 2,000,000 shares at $54/share ($108,000,000 offering) of J. P. Morgan & Co., Incorporated; with 66 underwriters; published 3/10/76, p. 54;

(e) $200,000,000 in Debentures of C.I.T. Financial Corporation, 50% 8-3/8% due 4/1/2001 and 50% 7-7/8% due 4/1/86, priced at 100%; with 49 underwriters; published 4/15/76, p. 38;

(f) $200,000,000 in Capital Notes due 1986 of The Chase Manhattan Bank (a proposed new issue), with the minimum principal amount which may be purchased of $1,000; not insured by the FDIC or any other government agency; subordinated to depositors and certain other creditors; with 108 underwriters; published 5/10/76, p. 34; and

(g) $500,000,000 Exchange Offering by Municipal Assistance Corporation for the City of New York (a Corporate Governmental Agency and Instrumentality of the State of New York /represented by Messrs. Paul, Weiss, Rifkind, Wharton & Garrison/), 8% 1976 Series 5 Bonds due 7/1/91 offered to the Holders of Outstanding Short-Term Notes of New York City; United States Trust Company of New York as Exchange Agent; published 5/31/76 in the Business and Financial section of defendant's newspaper.

16. It can be seen from the foregoing tombstone advertisements which defendant published that defendant is not at all reluctant to permit its readers to learn about (or respond to) offerings by a virtually bankrupt city (possibly amounting to contingent interests mentioned by Mr. Greenberg) which cannot even produce certified financial statements or various blue-chip offerings of securities in which the rate of interest is less than the current rate of inflation; or in what appears to be a speculative mining venture ($.001 par value), which does not compete with defendant's major corporate advertisers. Judging from these offerings permitted to be made through

defendant's newspaper, there is very little left of defendant's "standards" or "criteria" except a policy in furtherance of the conspiracy alleged in affiant's complaint in his Bar Association Action (see ¶ 4 above) and related conspiracy to prevent persons from competing with the major corporate advertisers of defendant and the co-conspirators.

17. Even defendant's editorial policy is supportive of the types of offerings for which it permits tombstone advertisements to be published. See Exhibit F hereto, a copy of various newspaper articles (really illegal prospectuses used to push the acceptable offerings), part of the illegal editorial scheme of promoting blue-chip offerings:

(a) "$25M Offering By Iowa Utility - New Issues", 3/30/76, p. 47;

(b) "$19.03M Offering - New Issues", 3/29/76, p. 48; and

(c) "$100M Offering by Cyprus Mines - New Issues", 3/31/76, p. 56.

Through this editorial support to blue-chip issues (contained in articles not designated as editorials), defendant is conditioning the market for readers to buy the offerings, which defendant permits to be advertised, in what amounts to a multi-billion-dollar securities manipulation.

18. It should be noted that defendant's listing (based on its advertising rate card no. 72, dated November 1, 1972) in Newspaper Rates and Data, published by Standard Rate and Data Service (hereinafter referred to as "SRDS") for May 12, 1973, vol. 55, no. 5 (Exhibit G hereto) makes no mention under ¶ 8 "Classification and Other Rates" or ¶ 13 "Contract and Copy Regulations" as to any conditions that advertisers must meet to place tombstone advertisements in defendant's newspapers. Thus, through defendant's advertising rate card and SRDS, both distributed nationally by use of the mails, defendant is misrepresenting its advertising policy throughout the nation, and is making everyone but a few sophisticated persons believe that defendant is attempting to obtain and publish tombstone advertisements from all sources,

when in fact it is limiting publication opportunities to the select few, for purposes discussed elsewhere in this affidavit. This is a massive fraud, and hurts persons such as plaintiff and his clients who attempt public offerings because of their belief that the newspapers who hold themselves out as willing to accept tombstone advertisements (through publication of tombstones and through sales promotional activities designed to obtain tombstones) in fact are willing to publish all such tombstone advertisements. The loss to plaintiff and his clients is substantial, including the loss of valuable rights of Mr. Thee (in which plaintiff has an interest because of the contingent-fee arrangement), which losses to date can never be recaptured (see ¶ 29 below).

19. I have seen rate cards for many of the other newspapers listed in ¶ 8 above, but in no card have I seen any description of the policy based on which the publication rejects advertisements which it allegedly is seeking through its rate card (and republication of the rate card in SRDS). SRDS is a periodic publication covering various media, subscribed to by virtually all advertising agencies and many major corporate advertisers, among others. I have been a subscriber to SRDS from time to time.

20. As a consequence of defendant's second refusal, by Mr. Greenberg on the 25th of June, I prepared, filed and had served the complaint in this action. All of the facts set forth in the complaint other than on information and belief are true, and as to such matters alleged to be on information and belief affiant believes they are true. I INTEND THIS PARAGRAPH AS A VERIFICATION OF MY COMPLAINT.

21. This practice of publishing some but not all of the tombstone advertisements offered to it amounts to an investment advisory service by defendant, for compensation. The compensation is derived from the readers who pay 25 cents per copy for the newspaper, and from the advertisers who pay for the accepted tombstone advertisements (and any other advertisements by them).

The editorial policy of defendant is to alert readers to securities offered by blue-chip issuers and governmental agencies (see ¶¶ 15-17 above) with editorial comment and policy leading prospective investors to believe that the offerings are being recommended for investment by the readers. Occasional offerings of a non-blue chip type (such as the offering of Independent Silver Producers) are permitted to be made as long as defendant sees no injury to defendant's major corporate advertisers (through lawsuits or increased competition). Through its selection process and editorial support to blue-chip securities offerings, defendant is rendering investment advice to its readers. The selection of which tombstone advertisements to publish is an endorsement or recommendation of the offering advertised in defendant's newspaper and enforcement of defendant's decision that readers should not buy the offerings for which tombstone advertisements have been rejected by defendant.

22. Most readers of defendant's newspaper have no other opportunity to see tombstone advertising, inasmuch as tombstone advertisements are advertised only in leading daily or Sunday newspapers, as a practical matter; that defendant's newspaper is the only afternoon newspaper; that 1 of the 2 daily newspapers (the Daily News) in New York City is not an adequate publication, in plaintiff's opinion, for tombstone advertisements to succeed. Most purchasers and other readers of The New York Times, Daily News and Post are not readers of The Wall Street Journal or Christian Science Monitor. Thus, if plaintiff and his client are going to have their tombstone advertisement read and acted upon in New York City, from an economic standpoint, it is only because it will be published in The New York Times and/or Post, both of which are suitable for the offered advertisement, in plaintiff's opinion, but both have refused. (Because of the nature of the offering, Mr. Thee is making his offering only to New York residents, although the offering is not an "intrastate offering".) As a result of the refusals, the readers and investing public

are not being informed of available investment opportunities in competition with the offerings through tombstone advertising published in the local New York papers, because of the wilful actions of defendant and the other newspapers (named as co-conspirators). This is just as much investment advice as if defendant's newspaper were split into two sections, as follows:

(I) For publication and editorial comment on the offers "suitable" to the Post's readers, in defendant's investment advisory opinion, and publication of tombstone advertising by some of the "suitable" issuers. The editorial comments are designed to elicit investors' attention to the offerings, and to encourage suitable issuers to place tombstone advertising with defendant, to purchase in the after-market or to buy from the underwriters or other members of the selling group; and

(II) All other parts of defendant's newspaper.

The first part of the newspaper is clearly an investment advisory service run for the benefit of the defendant and its major corporate advertisers and not for the readers who are being taken for a ride by the activity.

23. Defendant has an editorial policy favoring major corporations, which I have followed very closely for the past 2-3 years. The policy of adverse editorial comment on non-advertisers and favorable editorial policy toward advertisers seems to be typical of most newspapers in New York City, and perhaps elsewhere in the United States, and should not be carried over to the process by which capital is formed, presumably on a competitive basis; to prevent this competition in the way defendant is doing is a serious violation of the various federal securities laws, and to "freedom of the press".

24. In fact, defendant's policy came to light only a few months ago, when its own editorial staff when out on strike (by prohibiting the use of their names in by-lines) when the publisher, Ms. Schiff, refused to publish a story by Steve Lawrence critical of the supermarket industry in New York

City. Mr. Lawrence is the same reporter who several years earlier wrote adverse stories about Galaxy Foods and Futuristic Foods, which were competing with the supermarket advertisers in the Post (see ¶ 34 below). The Post feared loss of advertising revenues from the supermarket advertisers in the Post. This was told by Mr. Lawrence to a New York Times reporter, who had his article on the matter published in The New York Times on February 12, 1976, p. 64, column 1, a copy of which is annexed hereto as Exhibit H. This policy of (i) favoring major advertisers with publication of their tombstone advertisements; (ii) avoidance of criticism of major corporate advertisers or prospective advertisers; and (iii) resulting emphasis of newspaper criticism (i.e., adverse articles and/or editorial comment) on companies trying to compete with the major corporations -- is the only "freedom of the press" which defendant now enjoys, which freedom is being eroded further by its refusal to accept tombstone advertising from plaintiff and others similarly situated, resulting in further concentrations of economic power in the hands of the advertisers favored by defendant, with an increase in pressure upon the newspapers by the major advertisers for favored treatment.

25. GM (General Mills) is a major advertisers in newspapers throughout the nation, probably including defendant's newspaper. Exhibit I hereto is a copy of p. 446 (and part of p. 447) from the 1975-1976 Standard Directory of Advertisers, published by the National Register Publishing Co., which states that GM has approximate sales of $1,593,000,000; approximately 40,651 employees; approximately $63,300,000 in advertising expenses; uses 20 advertising agencies or branches thereof (7 of which are located in New York, N.Y.); and has a staggering list of consumer products which it advertises. Defendant probably has a small slice of the $63,300,000 in advertising expenses, and does not want to jeopardize this revenue, or wants to increase the revenue (a point as to which plaintiff will be on the alert throughout this litigation.

26. Defendant appears to be a substantial user of the mails and means of interstate commerce in connection with its publication, including the distribution thereof, and to be conducting a business in interstate commerce for purposes of the Sherman Act. I regularly purchase a copy of the New York Post in the two Amtrak railroad station cutlets in Philadelphia, when I go to Philadelphia for various proceedings (about 20 times during the past year); and defendant obtains advertising which it solicits through publishers representatives located in various other states and in Canada, the Bahamas and the Caribbean area. See ¶ 2 of Exhibit F hereto, the SRDS entry for defendant. Also, defendant solicits persons from various states to subscribe to the Post for mailing to other states (see copy of defendant's own advertisement from p. 2 of 6/28/76 edition, annexed hereto as Exhibit J). Also, advertisers pay by mail, as I have done in the past when advertising in the Post and other publications.

27. Plaintiff has standing to sue because he is being injured by defendant's continuing violations of the Investment Advisers Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, and possibly the Sherman Act and § 1985(2) of the Civil Rights Act. Plaintiff is being injured in his property interest in Mr. Thee's claims against GM, GMFG and Glass; and in his law practice which depends upon proper financing of a suit to obtain justice for his clients and to build his law practice; in his attempts to express himself politically through the Thee type of litigation as well as this action; and in plaintiff's attempts to associate himself with others for similar political expression, through litigation, under the First Amendment. Plaintiff has spent years developing his skills in the antitrust, business-oriented civil rights and securities areas, but this combined practice is being nipped in the bud by defendant and the co-conspirators who are preventing plaintiff from raising money for his clients needed to pursue their antitrust claims.

28. Plaintiff's client, Mr. Thee, stands ready at all times to join this action as a plaintiff, alleging similar standing and irreparable injury.

29. The injury is irreparable because (i) the claims of Mr. Thee are being adjudicated by passage of time alone (with decisions being made by the Court and Magistrate; witnesses moving, dying or forgetting their testimony, and motions being made or not made, based on the amount of funding available to plaintiff). The mere passage of time without adequate funds is an irreparable loss to plaintiff and his client, who, after obtaining sufficient funding would be barred from retracing past steps to do what money if available then would have allowed them to do. Court decisions made as the case progresses become the law of the case, and a final judgment becomes res judicata, barring any re-litigation of the matter, and converting the plaintiff's and client's claim into a judgment for an amount, and the grant of injunctive relief, both of which depend upon the amount of money available to plaintiff and his client during the course of the whole action; (ii) the inability to advertise the tombstone advertisement makes the offering grow "stale" and unattractive to prospective investors who know nothing about this suit (thanks to the blackout of news coverage by defendant and the other newspapers, which blackout could be expected under the editorial policy described above). These investors may not invest upon expiration of additional time after the June 25, 1976 date of the Offering Circular on the mistaken belief that the offering has had an opportunity to compete with other offerings (those advertised by defendant and other co-conspirators) and found wanting in some respect(s). This is an attitude of investors which is known to the investment industry and makes the practice of defendant more reprehensible and illegal; (iii) the First Amendment rights of affiant and Mr. Thee are being interfered with; and (iv) plaintiff is prevented from succeeding in his law practice as a political litigator.

30. Defendant would not be injured by being required (through a negative injunction) to accept the Thee tombstone advertisement. Defendant would derive additional revenue. The possible loss of advertising revenues in the short run (increased by an increase in competition, hopefully) and the possible unsuitability of the Thee offering for some of defendant's readers (if true) are insufficient justification for the illegal conduct of defendant. Defendant remains free to comment upon securities offerings, through articles or editorials, even plaintiff's offering, if defendant wishes to do so (subject, of course, to applicable federal and New York law).

31. The readers of the Post are not aware, generally, of the selection procedure. They assume that defendant will accept any tombstone advertising offered to it (and in fact various persons have expressed to plaintiff that they believe newspapers are required to, and in fact do, accept and publish advertisements for all offerings of any kind which are legal). A survey will support this view (unless the newspapers in New York City attempt to prejudice the public through articles and editorials). Therefore, the readers believe that the tombstone advertisements published by defendant represent all the tombstone advertisements which the Issuers (or their underwriters) seek to have published and that defendant's readers' selection of new issues in which to invest is confined necessarily to the securities offerings they see advertised in the newspaper, the only offer readers believe are currently being made. This practice constitutes a scheme or artifice to defraud readers under the various securities acts referred to in my accompanying memorandum of law. Non-disclosure of a material fact is just as actionable under such securities laws as wilful publication of a material false or misleading fact.

32. Defendant's purposes are:

(a) as stated to plaintiff and his legal assistant, Mr. Ehrlich: to publish tombstone advertisements only for investment offerings deemed "suitable" to their readers or which meet investment criteria of defendant; or

(b) (unstated to readers), to maximize the profits of defendant, by making the paper open only to major corporate advertisers and governmental agency advertisers, thereby encouraging them not to withdraw any advertising revenues and, hopefully from defendant's standpoint, to increase their advertising expenditures in defendant's newspaper. This defendant hopes will occur by defendant not allowing publication of tombstone advertising for issues of companies the activities of which could injure or otherwise be detrimental to the interests of any major corporations. Defendant believes that advertising from such corporations would be reduced or withdrawn as a penalty (amounting to "reciprocity", which appears to be illegal under the Sherman Act). Either of the above 2 reasons is illegal. No valid reason exists for the refusal by defendant to run some but not all tombstone advertising. Defendant should be prohibited from practicing as an unlicensed and unregulated investment adviser in the same way it would be prohibited, by injunction, from practicing law or medicine.

33. Defendant has an undisclosed conflict of interest with its readership because of purpose No. 2 above. Defendant is culling out investment opportunities for its readers without disclosing the financial interest it has in the selection procedure, and the fear that selection of favorable opportunities (i.e., opportunities which would compete favorably with the major corporate advertisers) could mean a reduction in (i) advertising revenue for defendant (in illegal reciprocity), and (ii) profits for defendant. This conflict of interest is even admitted by the publisher of the Post (see ¶ 24 above) in a recent New York Times report on an interview with a Post

"investigative" reporter, who was told to drop the matter.

34. Defendant has admittedly bowed to advertising pressure regarding the major (supermarket) advertiser, which resulted in the withholding of vital news to readers. This is the same type of advertising pressure defendant got or could expect to get if it permitted a company competing with supermarkets to advertise in its newspaper for capital (such as a company offering a food-shopping service by telephone). In fact, defendant's editorial policy of slanting news did a job on Galaxy Foods (see copy of article annexed hereto as Exhibit K (incomplete) and later, at various times, on Futuristic Foods, both telephone food-shopping services, who got into trouble with various authorities because of the effectiveness of their competition with defendant's major sources of revenue. Affiant assisted Galaxy and to a limited extent Futuristic Foods in connection with some of their legal problems resulting from their attempts to set up a food-distribution system in competition with the major advertisers serviced in all respects by defendant.

35. Although affiant is not requesting any change in editorial policy, affiant does say that competition for capital could at least allow the establishment of other newspapers willing to report the truth, which would put pressure on defendant and co-conspirator newspapers to follow suit, and let all persons advertise (subject to payment and lawfulness of offer). Only through freedom to compete can there be freedom of the press for defendant to enjoy.

36. The Post is on unsound financial ground, and is bowing to advertising pressure or prospective advertising pressure because of this, in an apparent short-range attempt to avoid business failure, at the expense of their unwitting readers. See copy of two articles annexed hereto as Exhibit L, which indicate that defendant is in an unsound financial position,

or so claims. This is good reason not to allow defendant to continue its scheme to manipulate the new-issue market and defraud its readers, because investors continue to be hurt and will have no recourse against the financially-troubled newspaper, which continues to cause stock-market losses to investor-readers because of its fraudulent investment advisory role and through its conspiracy with others, by failing to inform its readers of the availability of anything but blue-chip, low-income investment opportunities (which don't even have the prospects for offsetting inflation).

37. Donald MacDonald, Senior Vice President of The Wall Street Journal, advised affiant during early 1974 that he had spoken with the United States Justice Department (presumably because of some complaints by rejected tombstone advertising prospects) about the policy of the New York newspapers (including Dow Jones) to refuse some tombstone advertisements and that the Justice Department had said it would insist that the newspapers publish all offered tombstone advertisements. This suggests that the newspapers are acting in concert to some extent. The Justice Department's refusal to act is evidence of the need for a private attorney general such as plaintiff to obtain enforcement of the laws where governmental agencies are unwilling or unable (technically, financially or politically) to assist. This is an example of "political litigation" because of the governmental refusal to commence court proceedings to resolve the important soci-economic-political problem, which threatens to destroy the free-enterprise system (under the alluring guise of protecting the readers), as well as defendant's to be asserted "freedom of the press".

WHEREFORE, plaintiff respectfully requests that this Court grant his motion for a preliminary injunction in its entirety.

Carl E. Person

Subscribed and sworn to before me this 2nd day of July, 1976.

Notary Public

DIA J. BUTLICH
NOTARY PUBLIC, State of New York
No. 5[illegible]
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

CARL E. PERSON,
Plaintiff, :

-against- :

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, :
SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT, :
SUPREME COURT, APPELLATE DIVISION,- SECOND DEPARTMENT, and :
ATTORNEY GENERAL OF NEW YORK STATE, :
Defendants.

- - - - - - - - - - - - - - - - - - - X

75 C 1473
MEMORANDUM
and
ORDER

Appearances:

CARL E. PERSON, Esq., plaintiff pro se

HALIBURTON FALES, 2d Esq. (Messrs. WHITE & CASE and ROBERT H. HAILE, Esq., of Counsel) for The Association

DANIEL M. COHEN, Esq. (LOUIS J. LEFKOWITZ, Esq., Attorney General, of Counsel) for defendants other than the Bar Association, and for the Attorney General under Executive Law, § 71.

DOOLING, D.J.

Plaintiff has applied for the convening of a three judge court (28 U.S.C. § 2281) on the basis that the second count of the complaint challenges on constitutional grounds the validity of certain sections of the Judiciary Law of New York as implemented through the rules of the Appellate Divisions and the Lawyer's Code of Professional Responsibility.

Exhibit A

FPI SS—3-17-72—50M—9153

Broadly, plaintiff, a lawyer, contends that, as implemented and threatened to be applied, the statutes, rules and code stifle the prosecution and fair trial of litigation (such as antitrust triple damage cases) by making impossible the financing of such costly litigation. Plaintiff particularly points to the canons of professional conduct that, in substance, forbid the transfer for value of shares in the rights of action, and forbid the retention of expert witnesses whose compensation would be contingent on the success of the suit and would be measured upon the amount of the recovery.

The complaint names other courts and bar associations, bar association members, and clients of such members as coconspirators to the extent that they have joined in adopting or enforcing laws and rules

> "... which prohibit clients pursuing antitrust claims and/or their attorneys working on a contingent-fee basis from obtaining the money to pay the litigation expenses by selling a percentage of their respective interests in the antitrust claims to private or public investors and from employing expert witnesses to testify at the trial on a contingent-fee basis;"

Plaintiff as counsel is prosecuting a particular antitrust

case which, it is alleged, has become so expensive that the plaintiffs in it cannot bear the expense of bringing it to trial and retaining experts to testify and to prepare necessary accounting, survey, statistical and economic studies. Plaintiff alleges that he plans to and would, but for the statutes, rules and canons which appear to forbid it, seek investors, by private or public offering, whose investments would finance the pending litigation in exchange for the investors' receiving interests in the claim that in the aggregate would not exceed 50% of the final recovery; it is contemplated that the investors would not acquire any right to control the litigation, render legal advice about it, or engage in the practice of the law in connection with the case.

Plaintiff alleges that defendants in such cases as antitrust cases usually can afford to and do retain experts to aid in their defense, that such experts are often drawn from firms of experts who have regularly served the defendants in the past, expect to serve them in future, and may, therefore, be supposed to be influenced as expert witnesses by those factors; plaintiff complains that, in contrast,

plaintiffs are not free to retain experts whose compensation will be based on the amount of the recovery if there is any; this, plaintiff complains, is a legally enforced disparity in treatment that transgresses constitutional rights.

Hence, plaintiff argues that the Court should declare invalid the laws that, as implemented and applied, impose these radical and discriminatory disparities in rights of access to the courts of justice and in the ability of the less affluent litigants to vindicate their rights of property, and, further, that the court should enjoin their enforcement by defendants.

The parties have argued, in the main, the quality of the constitutional arguments advanced, plaintiff contending that they are substantial, the defendants that they are too insubstantial to justify convening a court under 28 U.S.C. 2281. It can well be thought that no threat of execution or enforcement is present, and that the case is, rather, one in which plaintiff's plans are frustrated by legal uncertainties that require resolution by ruling or, if need be, by judicial declaration.

While the briefs discuss champerty, maintenance and barratry, the discussion is wide of the mark and assumes rather than illuminates the points in issue. What is principally involved is the application of Judiciary Law § 90(2), vesting the state supreme court with "power and control" over lawyers and the practice of the law and authorizing the appellate divisions to censure, suspend from practice or disbar lawyers who are guilty of professional misconduct or conduct prejudicial to the administration of justice and/of the rules of several appellate divisions that define professional misconduct. The Appellate Division, First Department, defines such misconduct in its Rules § 603.2 as including violation of any Disciplinary Rule of the Code of Professional Responsibility as adopted by the State Bar Association effective January 1, 1970. Section 691.2 of the Second Department Rules is in the same language. Section 1022.17 of the Fourth Department rules similarly incorporates the Code of Professional Responsibility. Plaintiff emphasizes the incorporation from the Code, in this manner, of DR 2-103(D) (a lawyer may not help a person or organization that furnishes legal services to others to promote use of

the lawyer's services); DR 2-106(A) (a lawyer may not contract for or receive excessive fees); DR 2-107(A) (a lawyer may not divide fees with another lawyer unless done so with the client's assent and in proportion to services rendered and responsibility assumed); DR 3-101(A) (a lawyer is not to help a layman practice law); DR 3-102 (a lawyer is not to divide fees with a layman); DR 5-103(B) (a lawyer is not to advance or guarantee financial assistance to a litigant except to the extent of direct litigation expenses, and the client must remain liable for the expenses); DR 5-107 (C) (a lawyer may not practice in corporate or association form if nonlawyers own an interest in or are directors or officers of the entity or have the right to direct or control the lawyer's professional judgment); DR 7-109(C) (a lawyer may not pay, or acquiesce in the paying of, compensation to a witness contingent upon the content of his testimony or the outcome of the case, but may advance, guarantee, or acquiesce in the payment of a reasonable fee for the professional services of an expert witness). DR 5-103 provides that a lawyer shall not acquire a proprietary interest in the cause of action or subject

matter of a litigation he is conducting for a client, but may acquire his lien for services under applicable law, and may contract for a reasonable contingent fee.

The disciplinary rules in part lead back to First Department Rules § 603.18 (Champerty and Maintenance) and an identical Second Department rule provision (Section 691.15). These rules in substance forbid (1) the lawyer's giving in his own or in anothers name, before or after suit, a promise of anything of value to anyone to induce the placing of a claim in his hands or in the hands of another for the purpose of suing on it or defending against it, and forbid (2) the lawyer's paying any expense of prosecuting or defending against the claim as a consideration for such retainer.

The Judiciary Law covers some of the same ground. Sections 479, 481, and 482 make it unlawful for anyone to solicit or procure through solicitation a retainer for an attorney or to make a business of doing so, and make it unlawful for hospital employees, policemen, court personnel, or bailbondsmen to communicate with an attorney to aid or abet him in soliciting legal business or in procuring through

solicitation a retainer or other agreement to perform legal services, and make it unlawful for the attorney to employ anyone to solicit, or to aid or abet in soliciting legal business or a retainer. These acts are made misdemeanors by Section 485.

Section 488 is closer to the classic definition of champerty: the section forbids lawyers' buying or taking any interest by assignment in any sort of thing in action "with the intent and for the purpose of bringing an action thereon," and forbids lawyers' promising or giving a valuable consideration to anyone as an inducement to or in consideration for the placing in his hands (or another's) of a claim for the purpose of suing on it. Section 489 enacts that persons and partnerships engaged in the claim adjustment or collection business and corporations generally shall not buy or take any interest by assignment in anything in action, claim or demand "with the intent and for the purpose of bringing an action ... thereon."

It is not at once apparent that any transgression of statute or rule must occur if plaintiff's client transfers interests in the claim in suit as a means of obtaining money

to continue the suit to completion. The client has already put the claim in suit and engaged counsel of its own choosing. There is no suggestion that any voice in controlling the litigation would be given to the transferees of interests. Plaintiff alleges (as in paragraphs 14 and 17) that the transfer would embrace a corresponding share in plaintiff's contingent fee, but that, in substance, means only that plaintiff's original clients will pay plaintiff out of their share in the final recovery, and, presumably, that circumstance will enter into the client's calculations of what share of the claim he will sell and at what price.

At this juncture, leaving aside Disciplinary Rule DR 7-109C, there does not appear to be any threat of action to prevent partial assignments of the rights of action sued on, and there is no basis, simply for that reason, for seeking to enjoin state officers from enforcing statutes and rules of, at best, doubtful applicability and in advance of their infraction. Rather, the case is one in which no threat of interference could easily arise unless plaintiff had sought from the Committee on Ethics of the Bar Association

and been denied a favorable opinion on the ethical propriety of his project. If that occurs, then consideration of the issues tendered here will have to be resumed, although it seems questionable that, quite apart from any constitutional issues and the question of the substantiality of any such issues, the threat of enforcement by state officers will be such as to bring the case within Section 2281.

The questions circling around Disciplinary Rule DR7-109C stand in a different light. To quote it in full - it is subsumed under Canon 7 which provides that "A Lawyer Should Represent a Client Zealously Within the Bounds of the Law" -

> "A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:
> 1. Expenses reasonably incurred by a witness in attending or testifying.
> 2. Reasonable compensation to a witness for his loss of time in attending or testifying.
> 3. A reasonable fee for the professional services of an expert witness."

The language of the rule literally means that the fee arrangement of an expert for his services in a litigation may not be

contingent on the outcome of the case no matter how reasonable in amount and how probable the outcome and whether or not counsel in the same case are authorized (under Disciplinary Rule DR 5-103A.2.) to receive a fee contingent on the outcome of the case. The rule must be related to a risk of false swearing, the fear of which may be enhanced by a recognition that much expert testimony is difficult, often inscrutable and, therefore, especially open to calculated distortion. A fairly old - and difficult - New York case, Wellington v. Kelly, 1881, 84 N.Y. 543, 548-549, dealing with an agreement to compensate a witness for the production of critical testimony, approved contingent payment on the ground that the witness had an interest in the outcome of the case in any event, saying

> "The mere fact that the agreement might furnish a temptation to Hill [the witness] to prevaricate, or furnish false testimony, does not, we think, stamp the agreement as illegal per se, and no illegal or improper intent on the part of any of the parties is disclosed by the evidence."

But generally the New York cases enunciate the rule of DR 7-109C very clearly. Matter of Schapiro, 1st Dept. 1911, 144 App.Div. 1, 128 N.Y. Supp. 852; Laffin v. Billington,

App. Term 1st, 1904, 86 N.Y.Supp. 267. The Restatement of the Law, Contracts, § 552(2) is precisely to the same effect, as are 14 Williston, Contracts (3rd ed. 1972) 879 (§ 1716) and 6A Corbin, Contracts 379 (§ 1430). And the same rule is followed in N.Y.City Bar Assoc. Opinions No. 213 (1932) and 76 (1927-28). Only Barnes v. Boatmen's Nat'l Bank of St. Louis, 1941, 348 Mo. 1032, 156 S.W.2d 597 has been turned up as a case looking the other way. See also the language in Alexander v. Watson, 4th Cir. 1942, 128 F.2d 627, 630; Ferroline Corp. v. General Airline & Film Corp., N.D. Ill. 1952, 107 F.Supp. 326, 344; aff'd., 7th Cir. 1953, 207 F.2d 912, 916. The Barnes Court's holding sufficiently appears from the following excerpt:

> "Of course, counsel representing the administratrices knew that they must produce evidence to combat the presumption of Hugh Thomasson's sanity; however, there is nothing in the letter requiring respondent to furnish evidence to prove any specified fact. Nor is there anything in the evidence tending to show that respondent's testimony and advice was not his honest opinion. As this point is being ruled on appellant's demurrer to the evidence, we are not at liberty to draw the inference that respondent's testimony was false because his fee was contingent upon the success of the litigation. If we did so, we would be compelled

> to infer that a party litigant's testimony was false because he is interested in the outcome of his litigation. We would also have to infer that all witnesses were guilty of perjury who were produced by an attorney trying a case on a contingent fee basis.
>
> "We therefore hold that a valid contract does not become invalid as against public policy because the respondent was to be paid for his services only on the contingency that the estate of Hugh Thomasson should be successful in its various litigations then pending."

In this state of the law it would appear unlikely in the extreme that plaintiff could hope to obtain a favorable ruling from the Committee on Ethics. Yet without a ruling of some sort it is all but certain that he could not obtain an expert on a contingent fee basis, and, even if he could do so, and went forward, he would risk disciplinary proceedings. Plaintiff is, then, so far as concerns DR 7-109C, in the classic declaratory judgment plaintiff's posture (28 U.S.C. 2201; cf. Aetna Life Ins. Co. v. Haworth, 1937, 300 U.S.227; Willing v. Chicago Auditorium Ass'n, 1927, 277 U.S. 274, 288-289, 291) unless his contentions are so insubstantial that they can be characterized as frivolous. The contention in essence is that the disciplinary rule, whether or not it

expresses a tradition in the law of contracts, is irrational and operates in such a manner as to discriminate against those who cannot afford expert testimony, and may tend to deny to the less affluent litigant (typically but not necessarily a plaintiff) access to the courts in cases which, if fairly and fully tried, might be shown to be meritorious. The pungent comment of the Missouri court could well be thought to answer the claim of frivolity, and it might well be suggested that DR 7-109 C ignores the idea that an expert in ordinary expectation would not engage to misrepresent his opinion for a fee measured on the outcome of the case rather than decline to act in a case in which he did not in fact form an opinion favorable to the contention of the party seeking to engage his expertise. It is difficult to understand the basis on which a compensated expert could ever be heard as a witness if the ordinary expectation were that experts generally will distort or misrepresent their opinions for a fee. Contingency of payment might seem on analysis an irrelevancy: reasonableness might appear to be the touchstone and no less the touchstone for licit contingent fees than for fees payable in all events.

But again it is clear that the case is not one for an injunction within Section 2281, and is not a case for convening a three judge court.

It is, accordingly,

ORDERED that plaintiff's motion to convene a three judge court under 28 U.S.C. 2281 is in all respects denied.

Brooklyn, New York

March 24, 1976.

U. S. D. J.

IN REPLYING PLEASE QUOT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
REGIONAL OFFICE
26 FEDERAL PLAZA
NEW YORK, N.Y. 10007

NY:SI:AB A 68

June 22, 1976

Carl E. Person, Esq.
132 Nassau Street
New York, New York 10038

Re: Christian Thee
24NY-8026

Dear Sir:

We have examined the material filed in connection with the above Regulation A offering and have no further comments thereon. The offering may commence as of June 25, 1976 subject to compliance with the following:

(1) File with this office on or before their use in the offering (12) copies of the definitive offering circular dated as of the above effective date.

(2) Submit a written covenant signed by the issuer to furnish this office, every two weeks after the commencement of the offering, and until the completion thereof, with the name, address, telephone number (if known) and the number of shares of: (a) every subscriber to any of the shares offered; and (b) every person (if different from (a)) for whose account such shares were subscribed or who has any beneficial interest therein. Even if no shares are subscribed to submit the information and advise us accordingly. The covenant should state that upon completion of the offering a final list of all purchasers will be submitted. You are requested to draft the language of this covenant so that it clearly states that the names to be provided, will, to the best of the issuer's knowledge, be those of the actual public beneficial owner of the securities and not merely record owners or "nominee" accounts.

In addition, the language of the covenant should state that the suitability of this investment to the needs of the particular investor has been taken into account. you are reminded that pursuant to Title 18, Section 1001

Exhibit B

of the United States Code it is a criminal offense to make a false, fictitious or fraudulent statement in connection with any matter within jurisdiction of any agency of the United States.

(3) Ryle 256 of Regulation A requires that an offering circular be delivered to prospective purchasers at least 48 hours prior to the mailing of a confirmation of sale. Such delivery, however, does not preclude a finding of a violation of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 if all of the material facts concerning the offering have not previously been brought to the purchaser's attention. This is particularly true in the case of securities of a speculative nature. Please submit a covenant by the issuer to the effect that all such material facts indicative of the speculative nature of these securities will be brought to the attention of offerees at the time of any offer of the securities and that the offering circular will be delivered to prospective purchasers sufficiently in advance of any other solicitation to give recipients an opportunity to read it. The covenant should state that any selling dealers engaged by the underwriter will be required to adhere to the above standards.

(4) You are also requested to familiarize yourself with the contents of public Release No. 4150 under the Securities Act of 1933. This release sets forth certain practices which should be avoided in connection with a public offering.

(5) This office desires to be kept apprised of the progress of this offering subsequent to its commencement. You are requested to advise us, in writing, as to whether the offering was completed during the offering period, partially completed, or unsuccessful and all funds returned to subscribers. In addition, we wish to be advised, in writing, of the commencement of any trading market and the first day's opening bid and asked prices. In the event the issuer ceases operations, please advise us of such occurrence, in writing, within 48 hours. Failure to provide us with information may result in action by this office, pursuant to Rule 261(a)(7) of Regulation A under the Securities Act of 1933, and such other action as the Commission may deem appropriate.

(6) Rule 260 of Regulation A requires the filing of sales reports on Form 2-A within 30 days after the end of each six month period following the date of the original offering circular. The first report must be filed on or before January 25, 1977 . Failure to file this report may be grounds for suspension of the Regulation A exemption pursuant to Rule 261 of Regulation A. Submit a covenant signed by the issuer acknowledging his understanding of this requirement and the consequences of a failure to comply.

(7) If the offering is not completed within nine months from the date of the offering circular, Rule 256(e) requires that a revised offering circular shall be prepared, filed and used in lieu of the original offering circular. The instant offering circular may not be used after March 25, 1977 .

Six copies of the notice required by Rule 263 should be given to this office in the case of a delayed offering.

Rule 259 provides that the effectiveness of your file does not signify that the Commission has made a finding as to the accuracy or completeness of the material filed or has determined that the exemption provided by Regulation A is available. The responsibility for complying with the Regulation must be assumed by the person seeking the exemption, and the availability of the exemption depends upon factual compliance with applicable provisions of the Regulation.

Sincerely yours,

EDWIN H. NORDLINGER
Assistant Regional Administrator

By Alexander Bienenstock

Alexander Bienenstock, Chief
Branch of Small Issues

*This advertisement is neither an offer to sell nor a solicitation of an offer to buy any of these securities. The offer is made only by the Offering Circular.*

NEW ISSUE

100,000 Shares, with Maximum Continent Compound Interest of 25% Per Year; $5.00 Par Value; Redeemable and Callable; in the Lawsuit

CHRISTIAN THEE v. GENERAL MILLS, INC.
GENERAL MILLS FUN GROUP, INC. (formerly name PARKER BROTHERS, INC.(
AND MARVIN GLASS & ASSOCIATES

## PRICE: $5.00 PER SHARE

*Copies of the Offering Circular may be obtained from the undersigned only in states in which the undersigned is qualified to act and in which the Offering may be legally distributed.*

**CHRISTIAN THEE**
**76 State Street**
**Brooklyn, N.Y. 11201**
**(212) 834-1513**

Exhibit C

# New York Post

FOUNDED BY ALEXANDER HAMILTON IN 1801

*DOROTHY SCHIFF.....Editor-in-Chief and Publisher*
*ADELE HALL SWEET.....Assistant Publisher* *PAUL SANN.....Executive Editor*
*JAMES A. WECHSLER.....Editorial Page Editor* *ROBERT SPITZLER.....Managing Editor*

*Published daily except Sunday. Owned by the New York Post Corporation, 210 South St., New York, N.Y. 10002. Dorothy Schiff, President, Adele Hall Sweet, Vice President, Byron S. Greenberg, Treasurer. Jean Gillette, Secretary.*

Exhibit D

(a) New York Post January 12, 1976, p.35

(b) New York Post March 1, 1976, p.35


19%

YIELD*

NEW YORK CITY

*General Obligation Bonds*

Maturity: May 1, 1978

*Subject to capital gains tax

Coupon: 7%

Approximate Price: $79.60

*For Information*

Call "The Professionals"

212-747-9215

*or Write*

Donald Sheldon & Co., Inc.

ONE WALL STREET, NEW YORK, N. Y. 10005

Member National Association of Securities Dealers, Inc.

Accounts Insured by SIPC

Telephone: (212) 747-9215

*Please call me about your municipal bond offering* ☐

Name _____

Home Phone _____ Bus. Phone _____

Address _____

City _____ State _____ Zip _____

1-7-51


BEST COPY AVAILABLE

Exhibit E

(c) New York Post March 5, 1976, p.49

This announcement is neither an offer to sell nor a solicitation of an offer to buy any of these securities. The offer is made only by the Prospectus.

New Issue

March 5, 1976

6,000,000 Shares

# Independent Silver Producers, Inc.

(A Nevada Corporation)

Common Stock, $.001 Par Value

$.15 per share

Copies of the Prospectus may be obtained from the undersigned only in states where the undersigned may legally offer these securities in compliance with the securities laws thereof.

## S. B. CANTOR & CO., INC.

79 Wall Street, New York, N.Y. 10005

Please send me a copy of the Independent Silver Producers Prospectus

Name (print) .....

Address .....

City .....

State/Zip ..... Telephone .....

*[illegible] offer to sell nor solicitation of an offer to buy any of these Securities. The offer is made only by the Prospectus.*

BEST COPY AVAILABLE

# 2,000,000 Shares

# J. P. Morgan & Co. Incorporated

## Common Stock

*($2.50 Par Value)*

## Price $54 a Share

*Copies of the Prospectus may be obtained in any State from only such of the undersigned as may legally offer these Securities in compliance with the securities laws of such State.*

*MORGAN STANLEY & CO. Incorporated* — *SMITH BARNEY, HARRIS UPHAM & CO. Incorporated*

*SACHE HALSEY STUART INC.* — *THE FIRST BOSTON CORPORATION* — *BLYTH EASTMAN DILLON & CO Incorporated*

*DILLON, READ & CO. INC.* — *DONALDSON, LUFKIN & JENRETTE Securities Corporation* — *DREXEL BURNHAM & CO Incorporated*

*GOLDMAN, SACHS & CO.* — *HORNBLOWER & WEEKS-HEMPHILL, NOYES Incorporated*

*E. F. HUTTON & COMPANY INC.* — *KEEFE, BRUYETTE & WOODS, INC.* — *KIDDER, PEABODY & CO Incorporated*

*UHN, LOEB & CO.* — *LAZARD FRERES & CO.* — *LEHMAN BROTHERS Incorporated* — *LOEB, RHOADES & CO.*

*MERRILL LYNCH, PIERCE, FENNER & SMITH Incorporated* — *PAINE, WEBBER, JACKSON & CURTIS Incorporated*

*REYNOLDS SECURITIES INC.* — *SALOMON BROTHERS* — *M. A. SCHAPIRO & CO., INC.* — *WERTHEIM & CO., INC.*

*WHITE, WELD & CO. Incorporated* — *DEAN WITTER & CO. Incorporated* — *BEAR, STEARNS & CO.* — *WARBURG PARIBAS BECKER INC.*

*ABD SECURITIES CORPORATION* — *BASLE SECURITIES CORPORATION* — *ALEX. BROWN & SONS*

*EBERSTADT & CO., INC.* — *EUROPARTNERS SECURITIES CORPORATION*

*FAULKNER, DAWKINS & SULLIVAN, INC.* — *ROBERT FLEMING Incorporated* — *KLEINWORT, BENSON Incorporated*

*MOSELEY, HALLGARTEN & ESTABROOK INC.* — *NEW COURT SECURITIES CORPORATION*

*OPPENHEIMER & CO., INC.* — *R. W. PRESSPRICH & CO. Incorporated* — *L. F. ROTHSCHILD & CO.*

*SHIELDS MODEL ROLAND SECURITIES Incorporated* — *SOGEN-SWISS INTERNATIONAL CORPORATION*

*THOMSON & McKINNON AUCHINCLOSS KOHLMEYER INC.* — *SPENCER TRASK & CO. Incorporated*

*TUCKER, ANTHONY & R. L. DAY, INC.* — *UBS-DB CORPORATION* — *WOOD, STRUTHERS & WINTHROP INC.*

*AMERICAN SECURITIES CORPORATION* — *ARNHOLD AND S. BLEICHROEDER, INC.*

*J. C. BRADFORD & CO. Incorporated* — *DOMINICK & DOMINICK, Incorporated* — *DOMINION SECURITIES HARRIS & PARTNERS INC.*

*FIRST MANHATTAN CO.* — *LADENBURG, THALMANN & CO. INC.*

*C. E. UNTERBERG, TOWBIN CO.* — *WOOD GUNDY INCORPORATED* — *A. E. AMES & CO. Incorporated*

*DAIWA SECURITIES AMERICA INC.* — *FARNESTOCK & CO.* — *LEPERCQ, DE NEUFLIZE & CO. Incorporated*

*MOORE & SCHLEY, CAMERON & CO.* — *THE NIKKO SECURITIES CO. International, Inc.*

*NOMURA SECURITIES INTERNATIONAL, INC.* — *ULTRAFIN INTERNATIONAL CORPORATION*

*WILLIAM D. WITTER, INC.* — *YAMAICHI INTERNATIONAL (AMERICA), INC.*

(e) New York Post April 15, 1976, p.38

*This announcement is not an offer of securities for sale or a solicitation of an offer to buy securities.*

New Issues

April 15, 1976

# $200,000,000

# C.I.T. Financial Corporation

## $100,000,000 8⅜% Debentures due April 1, 2001

Price 99¼%

plus accrued interest from April 1, 1976

## $100,000,000 7⅞% Debentures due April 1, 1986

Price 100%

plus accrued interest from April 1, 1976

*Copies of the prospectus may be obtained from such of the undersigned as may lawfully deliver the prospectus in compliance with the securities laws.*

Dillon, Read & Co. Inc. — Kuhn, Loeb & Co.

The First Boston Corporation — Lazard Frères & Co. — Merrill Lynch, Pierce, Fenner & Smith Incorporated

Salomon Brothers — Bache Halsey Stuart Inc. — Blyth Eastman Dillon & Co. Incorporated

Drexel Burnham & Co. Incorporated — Goldman, Sachs & Co. — Hornblower & Weeks-Hemphill, Noyes Incorporated

E. F. Hutton & Company Inc. — Lehman Brothers Incorporated — Loeb, Rhoades & Co.

Paine, Webber, Jackson & Curtis — Reynolds Securities Inc. — Smith Barney, Harris Upham & Co. Incorporated

Wertheim & Co., Inc. — White, Weld & Co. Incorporated — Dean Witter & Co. Incorporated

Bear, Stearns & Co. — L. F. Rothschild & Co. — Shields Model Roland Securities Incorporated — Weeden & Co. Incorporated

Wood, Struthers & Winthrop Inc. — ABD Securities Corporation — Basle Securities Corporation

Alex. Brown & Sons — F. Eberstadt & Co., Inc. — EuroPartners Securities Corporation

Moseley, Hallgarten & Estabrook Inc. — New Court Securities Corporation — Wm. E. Pollock & Co., Inc.

R. W. Pressprich & Co. Incorporated — SoGen-Swiss International Corporation

Thomson & McKinnon Auchincloss Kohlmeyer Inc. — Spencer Trask & Co. Incorporated

Tucker, Anthony & R. L. Day, Inc. — UBS-DB Corporation — Advest Co. — American Securities Corporation

Arnhold and S. Bleichroeder, Inc. — Ladenburg, Thalmann & Co. Inc. — Stuart Brothers

Dominion Securities Harris & Partners Inc. — Fahnestock & Co. — Wood Gundy Incorporated

Daniels & Bell Inc. — Shelby Cullom Davis & Co.

*An Offering Circular relating to these securities has been filed with the Comptroller of the Currency of the United States but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the Offering Circular becomes effective. This advertisement shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.*

**Proposed New Issue expected to be offered May 18, 1976**

# $200,000,000

# The Chase Manhattan Bank

(National Association)

## Capital Notes Due 1986

INTEREST PAYABLE MAY 1 AND NOVEMBER 1

**The minimum principal amount of the notes which may be purchased is $1,000.**

These Capital Notes will not be deposits and will not be insured by the Federal Deposit Insurance Corporation or any other government agency and will be subordinated in right of payment to the claims of depositors and certain other creditors.

Lehman Brothers Incorporated

Lazard Frères & Co.

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Morgan Stanley & Co. Incorporated — The First Boston Corporation — Bache Halsey Stuart Inc.

Blyth Eastman Dillon & Co. Incorporated — Dillon, Read & Co. Inc. — Donaldson, Lufkin & Jenrette Securities Corporation

Drexel Burnham & Co. Incorporated — Goldman, Sachs & Co. — Hornblower & Weeks-Hemphill, Noyes Incorporated

E. F. Hutton & Company Inc. — Keefe, Bruyette & Woods, Inc. — Kidder, Peabody & Co. Incorporated

Kuhn, Loeb & Co. — Loeb, Rhoades & Co. — Paine, Webber, Jackson & Curtis Incorporated

Reynolds Securities Inc. — M. A. Schapiro & Co., Inc.

Smith Barney, Harris Upham & Co. Incorporated — Warburg Paribas Becker Inc. — Wertheim & Co., Inc.

White, Weld & Co. Incorporated — Dean Witter & Co. Incorporated — Bear, Stearns & Co.

Alex. Brown & Sons — L. F. Rothschild & Co. Incorporated — Shearson Hayden Stone Inc.

Shields Model Roland Securities Incorporated — Weeden & Co. Incorporated — Wood, Struthers & Winthrop Inc.

ABD Securities Corporation — Advest Co. — Basle Securities Corporation

J. C. Bradford & Co. — F. Eberstadt & Co., Inc. — EuroPartners Securities Corporation

Robert Fleming Incorporated — Kleinwort, Benson Incorporated — Ladenburg, Thalmann & Co. Inc.

Mitchell, Hutchins Inc. — Moseley, Hallgarten & Estabrook Inc.

New Court Securities Corporation — The Nikko Securities Co. International Inc. — Oppenheimer & Co., Inc.

Wm. E. Pollock & Co., Inc. — R. W. Pressprich & Co. Incorporated — John J. Ryan & Co., Inc.

SoGen-Swiss International Corporation — Thomson & McKinnon Auchincloss Kohlmeyer Inc.

Spencer Trask & Co. Incorporated — Tucker, Anthony & R. L. Day, Inc. — UBS-DB Corporation

C. E. Unterberg, Towbin Co. — William D. Witter, Inc. — American Securities Corporation

Arnhold and S. Bleichroeder, Inc. — Baker, Weeks & Co., Inc.

Bruns, Nordeman, Rea & Co. — Butcher & Singer — Daiwa Securities America Inc.

Dominion Securities Harris & Partners Inc. — Elkins, Stroud, Suplee & Co. — Fahnestock & Co.

Faulkner, Dawkins & Sullivan, Inc. — Greenshields & Co Inc — Grunt & Co.

Janney Montgomery Scott Inc. — Legg Mason/Wood Walker Incorporated

Nomura Securities International, Inc. — The Robinson-Humphrey Company, Inc.

Stuart Brothers — Wood Gundy Incorporated — Yamaichi International (America), Inc. — Dolt & Co., Inc.

First Equity Corporation of Florida — First Manhattan Co. — Herzfeld & Stern

Jesup & Lamont Incorporated — McLeod, Young, Weir. Incorporated — Moore & Schley, Cameron & Co.

Nesbitt Thomson Securities, Inc. — Suez American Corporation — Adams & Peck

Burgess & Leith — Carreau, Smith, Inc. — Richard W. Clarke Corporation — Daniels & Bell, Inc.

DeHaven & Townsend, Crouter & Bodine — Ernst & Company — First Albany Corporation

First Harlem Securities Corporation — Freeman Securities Company, Inc.

Furman Selz Mager Dietz & Birney Incorporated — Hamershlag, Kempner & [illegible] — Hardy & Co.

Hoppin, Watson Inc. — Johnson, Lane, Space, Smith & Co., Inc. — Joseph [illegible] & Co.

Kermendi, Byrd Brothers, Inc. — Lepercq, de Neuflize & Co. Incorporated — [illegible] & Co., Inc.

Richardson Securities, Inc. — Zuckerman, Smith & Co. Incorporated — [illegible] Inc.

Colin, Hochstin Co. — [illegible] Company, Inc.

Please send me a free copy of the Preliminary Offering Circular of The Chase Manhattan Bank (National Association).

Name _____

Street _____

*This announcement is not an offer to buy nor a solicitation of an offer to sell any of these securities. The offer is made solely by the Exchange Offer Official Statement and is not being made, nor will tenders for exchange be accepted from holders of City Notes, in any jurisdiction in which the making or acceptance thereof would not be in compliance with the securities or blue sky laws of such jurisdiction.*

# Notice of Exchange Offer by

# Municipal Assistance Corporation For The City of New York

**(A Corporate Governmental Agency and Instrumentality of the State of New York)**

## 6% 1976 Series 5 Bonds due July 1, 1991

## To the Holders of Outstanding Short-Term Notes of

# The City of New York

Subject to the terms and conditions set forth in the Exchange Offer Official Statement dated May 21, 1976, the Municipal Assistance Corporation For The City of New York (the "Corporation") is offering to exchange with holders of up to $500,000,000 principal amount of certain revenue anticipation notes and bond anticipation notes of The City of New York with stated maturity dates of December 11, 1975, January 12, 1976, February 13, 1976, and March 12, 1976 and outstanding on the date hereof (the "City Notes") its 1976 Series 5 Bonds (the "1976 Bonds") in an aggregate principal amount equal to such aggregate principal amount of the City Notes tendered hereunder. The Corporation may, but is not obligated to, accept any amount of City Notes tendered in excess of $500,000,000. If a principal amount of City Notes greater than $500,000,000 is tendered to the Corporation and the Corporation determines either not to accept an amount greater than $500,000,000 or to accept an amount greater than $500,000,000 but less than the total amount of City Notes tendered, the Corporation will accept City Notes tendered on a pro rata basis as is more fully described in the Exchange Offer Official Statement.

Persons exchanging their City Notes pursuant to the Exchange Offer will retain the right to receive interest from the City for the period commencing on the stated maturity date or dates of their City Notes and concluding on the Expiration Date of the Exchange Offer.

The Corporation has no taxing power. The 1976 Bonds do not constitute an enforceable obligation, or a debt, of either the State or the City and neither the State nor the City shall be liable thereon. Neither the faith and credit nor the taxing power of the State or the City is pledged to the payment of principal of or interest on the 1976 Bonds.

**The Exchange Offer will expire at 5:00 P.M., Eastern Daylight Time, on June 21, 1976, unless extended at the election of the Corporation (such date and time, as they may be extended, being referred to as the "Expiration Date"). All tenders are revocable until 3:30 P.M. Eastern Daylight Time, on June 7, 1976, and thereafter are irrevocable. At the election of the Corporation, the Exchange Offer may be extended, but it is the present intention of the Corporation not to extend the Offer.**

Holders of City Notes are urged to review the Exchange Offer Official Statement carefully. Those desiring to accept the Exchange Offer may do so by completing and executing the appropriate Letter of Transmittal and mailing or delivering it together with the City Notes so that such Letter and the City Notes are received not later than the Expiration Date by the Exchange Agent. Tenders by mail will be accepted only if actually received by the Exchange Agent on or before the Expiration Date regardless of the date of mailing. The Exchange Offer may also be accepted by making delivery (not mailing) at certain locations in New York City specified in the Letters of Transmittal.

Copies of the Exchange Offer Official Statement and the Letters of Transmittal may be obtained from the Exchange Agent, at The Chase Manhattan Bank, N.A., Citibank, N.A., Kidder, Peabody & Co. Incorporated, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Morgan Guaranty Trust Company of New York, Salomon Brothers, and at many offices of other banks and securities dealers throughout the country. The availability of such documents from such organizations does not imply any recommendation by them as to the merits of the Exchange Offer or any representation by them as to the accuracy or completeness of the Exchange Offer Official Statement.

**Exchange Agent:**

**UNITED STATES TRUST COMPANY OF NEW YORK**

*By Mail*

BEST COPY AVAILABLE

New York Post March 30, 1976, p.47

# $25M Offering By Iowa Utility

Iowa Public Service Co. has filed with the SEC $25 million of 30-year first mortgage bonds to be sold at public bidding May 4.

Proceeds will be used to pay off a maturing issue of bonds and for construction expenditures.

Brascan International Capital Corp. said it plans to raise $25 million on the international capital market through an offering of six year notes.

The company is a wholly owned subsidiary of Brascan Ltd. which will guarantee the notes.

The anticipated coupon is 9¾ per cent. The coupon and the issue price are due to be fixed on April 6. The final maturity date is May 1, 1982.

The managing syndicate is led by Wood Gundy Ltd. and includes Banque Bruxelles Lambert S.A.; Baring Brothers & Co.; Credit [illegible]; White Weld [illegible]; Deutsche Bank A.G.; and Ku[illegible]

NEW ISSUES

wait Investment Co. S.A.K.

The $19.3 million of Albuquerque, N.M., various purpose bonds were apparently won by Bank of America and United California Bank.

A Bank of America team submitted a bid on $18.4 million of securities, setting the annual borrowing rate to the city at 4.49 per cent.

Subject to award, the bonds were scaled to yield 8.45 per cent in 1977.

The remaining $3.9 million of obligations were apparently sold to underwriters headed by United California Bank for a yearly interest rate of 4.93 per cent.

A $60 million sale of Public Service Electric & Gas Co. bonds, postponed from an original March 4 sales date, is now slated for offering tomorrow through Merrill Lynch, Pierce, Fenner & Smith.

New York Post March 29, 1976, p.48

# $[illegible]M Offering

The $19.3 million bonds of Albuquerque are slated for competitive bidding today.

The $13.5 million bonds of Valdez, Alaska, are also set for competitive bidding today.

The $25 million bonds of Hawaiian Telephone Co. are scheduled for competitive bidding tomorrow, as are the $100 million bonds of California.

NEW ISSUES

The $10.2 million bonds of Peabody, Mass., are slated for competitive bidding tomorrow.

The $50 million revenue bonds of Kansas are set for competitive bidding Wednesday.

The $[illegible] million debentures of Big Three Industries are expected to be negotiated with Merrill, Lynch, Pierce, Fenner & Smith some time this week.

The $50 million notes of Greyhound Leasing & Financing Corp. are to be negotiated this week with White, Weld & Co.

The four million shares of preferred stock of Pacific Gas & Electric Co. are to be negotiated with Dean Witter & Co.

The 3.5 million shares of common stock of Pennsylvania Power & Light Co. are to be negotiated this week with First Boston Corp., as are the 1.5 million shares of common stock of Inland Steel Co.

New York Post March 31, 1976, p.56

# $100M Offering By Cyprus Mines

Cyprus Mines Corp. says it filed with the SEC $100 million of sinking fund debentures due April 15, 2001.

Smith Barney Harris Upham & Co. and Warburg Paribas Becker Inc. are to be in charge of the sale.

The SEC approved a proposal of Northern Utilities

NEW ISSUES

and three of its subsidiaries to issue notes to banks or dealers in commercial paper.

The SEC [illegible] may have outstanding [illegible]

[illegible] Connecticut Light & Power Co. [illegible] may have outstanding a maximum of [illegible] million, [illegible]

[illegible] Ocean [illegible] it filed with the [illegible] on initial offering of [illegible] common shares [illegible] expected price of $[illegible]

[illegible]

Exhibit F

# POST

(Manhattan Borough)
(Tabloid)

210 South St., New York, N. Y. 10002.
Phone 212-349-5000.

Media Code 1 133 5640 6.00

EVENING AND SATURDAY (Weekend Edition)
(Evening edition not published Jan. 1, May 30, July 4, Labor Day, Thanksgiving or Christmas.)
Member: I.N.A.K.

**1. PERSONNEL**
Editor in Chief & Publisher—Dorothy Schiff.
Advertising Director—Arthur Brody.
Advertising Manager—Julian S. Lewis.
National Advertising Mgr.—John Drisdells.
Hotel & Resort Adv. Dir.—William H. Sonnenscheln.

**2. REPRESENTATIVES and/or BRANCH OFFICES**
Ward-Griffith Company, Inc., Midwest (except automotive); New England; Far West and South (except Florida).
Metropolitan Publishers Representatives, Inc.; Canada, Bahamas, Florida, Caribbean area.
Campbell-Reynolds, Inc.
All other classifications direct to newspaper.

**3. COMMISSION AND CASH DISCOUNT**
15% to agencies recognized by New York Post, 15th following month. No cash discount. In the event of cancellation of agency recognition before completion of contract or order, no agency commission shall be due or payable upon any contract or order on advertising matter published subsequent to such cancellation.
Financial, legal, bids and proposals or election advertising of the city, state, or federal government, or any political subdivision thereof, not commissionable.
General display advertising, resort or rental copy of the city, state or federal government, or any political subdivision thereof, or display copy offering merchandise for sale by any of these governments is commissionable.

**4. GENERAL RATE POLICY**
Alcoholic beverage advertising accepted.

## ADVERTISING RATES

Effective November 1, 1972. (Card No. 72.)
Received November 8, 1972.

**5. LINE RATE** — Per agate line
Open (daily or weekend) ..... 3.36
Within 1 year:
2,500 lines or 13 times ..... 3.28
5,000 lines or 26 times ..... 3.20
10,000 lines or 52 times ..... 3.17
20,000 lines or 104 times ..... 3.13
35,000 lines or 156 times ..... 3.10
50,000 lines ..... 3.06

PAGE FREQUENCY CONTRACT DISCOUNTS
Within 1 year:
13 pages ..... 3.13
26 pages ..... 3.10
39 pages ..... 3.06
52 pages ..... 3.02

APPLICATION OF DISCOUNTS
Signed contracts required to earn sliding scale rates. Contracts will not be accepted for period of more than 12 months from effective date of contract. In order to validate contract, advertising must be started within thirty days from its effective date. Contract will not be accepted by publisher earlier than thirty days prior to effective date of contract. No contract changes, alterations, amendments or revisions shall be effective unless in writing signed by the Advertising Director of the New York Post. Multiple products and corporate schedules may be combined to earn lower rate.

**6. COMBINATION RATES**
Daily ad repeated (same copy) in the following Saturday Weekend Edition, flat, per line ..... 1.40
Weekend lineage counts toward contract fulfillment only, but is not rebatable.

**7. COLOR RATES AND DATA**
Available daily. Minimum 600 lines.
Use b/w line rate plus following costs:
Flat, extra (b/w 1c) ..... 750.00
B/W 2c & full color (ROP), extra ..... 1,500.00
13 times or more within one year 10% discount.
Double truck, extra ..... 2,500.00
Center fold of insert section; one plate, blee'd through.
Closing dates: Reservations 1 week in advance; printing material (b/w 1c) 9:00 a.m. 2 days in advance, b/w 2c, 3c, dbl. truck, 5 days before publication.
Plates or mats: If mats, 2 sets. Require: 6 progressive proofs, 4 registration marks. Running head and date line required.
Corrections or cancellations not accepted after printing material is delivered.

**8. CLASSIFICATION AND OTHER RATES**
Minimum 1 column, 14 lines, unless otherwise stated under classifications. — Per agate line
Amusement and all paid entertainment (including Motion Pictures), open (daily) ..... 3.18
Open (weekend) ..... 2.81
Minimum 6 lines, 1 column; 10 lines, 2 columns.
For additional lines consult publisher.
†Automobiles, Accessories, Aircraft, Boats, Jeeps, Trailers, open ..... 3.36
Automotive and Tire Rates—Dealer Associations:
1 time, R.O.P. ..... 3.36
Ads appearing on sport pages with or near automotive dealer classified and display take following rates and must contain 2 or more dealer listings or must be clearly identified as dealer association ad:

| | Per agate line |
|---|---|
| 1 time | 2.95 |
| 5,000 lines in 1 year | 2.34 |
| 10,000 lines in 1 year | 2.28 |

| | Daily | Weekend |
|---|---|---|
| Baseball & Football, flat, per agate line | 3.30 | 3.05 |

Board of Election Notices—rates on request.

| Book Publishers: | Per agate line |
|---|---|
| Open | 2.61 |
| 1,000 lines or 13 tl. in 1 year | 2.46 |
| 2,500 lines or 26 tl. in 1 year | 2.32 |
| 10,000 lines or 52 tl. in 1 year | 2.19 |

Saturday (Weekend Edition) combination: 1.50 per line applies to Weekend ad if it is identical to weekday ad and appears either Weekend prior or subsequent to weekday insertion. Weekend ad applies toward contract fulfillment. Regular rates apply to first ad.
Double Weekend combination: 1.50 per line applies to second Weekend ad if it is same as first Weekend ad and ads appear in same other [illegible] Both ads apply toward contract fulfillment.
Back Page available Mon., Tues., Thurs. — weekend; Weekday and Weekend combination rates available.

| | Per agate line |
|---|---|
| Financial, open | 3.15 |

For additional rates, contact publisher.
Bank or Trust Company Statements: Financial rates apply.
General notice to security holders, dividend and interest notices, meetings of corporations, Redemptions and other Financial Notices, flat ..... 2.60
Savings Banks, Savings and Loan Associations and Loan Companies, open ..... 3.00
For additional rates, contact publisher.

| Hotels, Restaurants and Night Clubs: | Daily | Weekend |
|---|---|---|
| Open | 2.77 | 2.52 |
| 26 tl. or 1,000 lines in 1 year | 2.59 | 2.35 |
| 52 tl. or 2,500 lines in 1 year | 2.51 | 2.28 |
| 104 tl. or 5,000 lines in 1 year | 2.40 | 2.19 |
| 156 tl. or 10,000 lines in 1 year | 2.29 | 2.10 |

| Hotels and Resorts: | Per agate line |
|---|---|
| Open | 3.25 |
| 13 tl. in 1 year | 3.13 |
| 26 tl. or 2,500 lines in 1 year | 3.01 |
| 40 tl. or 4,000 lines in 1 year | 2.95 |
| 52 tl. or 5,000 lines in 1 year | 2.83 |
| 104 tl. or 10,000 lines in 1 year | 2.71 |

Combination Rates:
Hotel & Resort advertiser in Tuesday Resort & Travel Section at above schedule of rates may repeat identical ad in following Thursday Resort section. Flat ..... 1.65
Combination with Weekend Edition:
Weekday ad repeated same copy in the following Sat. (Weekend Edition), flat ..... 1.40
(Weekend lineage counts toward contract fulfillment only, but not rebatable.)
Hotels & Resorts Full Page Frequency Rates:
1 full page (1,200 lines) ..... 2,532.00
Full page (Thurs., same week, same copy) ..... 1,980.00
Full page (following Tues., same copy) ..... 2,208.00
Hotels & Resorts Half Page Frequency Rates:
1/2 page (600 lines) ..... 1,410.00
1/2 page (Thurs., same week, same copy) ..... 990.00
1/2 page (following Tues., same copy) ..... 1,278.00
1/2 page (3rd Tues., same copy) ..... 1,134.00
1/2 page (10 within 3-month period) ..... 1,104.00
Minimum insertion (contract credit) 14 lines. Tuesday and Thursday ads considered 2 separate insertions (must be scheduled simultaneously to earn combination rates).

Hotels & Resorts & Government Bureaus (outside Continental U. S. & Canada):

| | Per agate line |
|---|---|
| Open | 2.80 |
| 2,500 lines in 1 year | 2.40 |
| 5,000 lines in 1 year | 2.30 |
| Full page (1,200 lines) | 2,520.00 |

Combination rate:
Hotel & Resort advertisers in Tuesday Resort & Travel Section at above rates may repeat identical ad in following Thursday Resort section, flat ..... 1.65
Combination with Weekend Edition:
Weekday ad repeated (same copy) in following Sat. (Weekend Edition), flat ..... 1.40
(Weekend lineage counts toward contract fulfillment only, but not rebatable.)
Minimum 14 lines.

| | Per agate line |
|---|---|
| †Transportation, open | 3.36 |
| Travel Agent ad, open | 3.25 |

For additional rates, consult publisher.
Legal—contact publisher.
Photography—National; see Classified Display.

| | Per agate line |
|---|---|
| Political, flat | 3.36 |
| †Radio Station, Radio Program ads or TV, open | 3.36 |

| | Per agate line Daily | Weekend |
|---|---|---|
| Sports Events, flat | 3.30 | 3.05 |
| Turf and Racing, open | 3.50 | 3.05 |
| 10,000 lines within 1 yr. (on contract) | 3.40 | 2.95 |

(†) Discounts apply.

POSITION CHARGES
Pages 2 to 5 not sold except for reading notices. Page 1, back page, or Magazine Section not sold. Pages 6 or 7 (publisher's option) extra .45 per line. Other specified pages, extra .40 per line.

STRIP ADVERTISING
Strip: Minimum 35 lines deep by 6 cols., open, per line 3.36. Discounts apply.

**8b. SPACE SPOTS**
Minimum 25 lines to maximum 100 lines. 13 consecutive weeks; 5 spots per week. Insertions at publisher's option. 33-1/3% discount off advertiser's applicable contract rate. Omission of any spot ordered does not affect discount.

**9. SPLIT-RUN**
*DEALER TIE IN ADVERTISING
Two pieces of copy can be tested, alternating in every other paper. Complete electro or mat, including key number, required for each piece of copy, approved for release 24 hours before publication. Extra charge for mechanical operation (non-commissionable).
Applies to national advertising only.
1/2 page minimum, extra, flat charge ..... 100.00
(*) Dealer tie-in rate applies to those ads with address changed according to locality of dealers.

**10. CLASSIFIED AD RATES**
Effective November 1, 1972. (Card No. 38.)
15% agency; cash with order unless credit established.
Note: Classified R.O.P. and Display R.O.P. columns 11 picas wide, 6 cols. to page. Classified and Classified Display columns 9.6 picas wide, 7 cols. to page. Rates below apply to Classified columns unless indicated otherwise.
Apartments, Automotive, Business Opportunities, Business Service, Lost & Found, Merchandise, Commercial, Nursing Homes, Residential, Clubs & Hotels, Furnished Rooms-Hotels, Real Estate:

| | Per agate line |
|---|---|
| 1 time | 3.35 |
| 2 consecutive days | 3.85 |
| 3 consecutive days | 2.75 |
| 4 consecutive days | 2.00 |
| 5 consecutive days | 1.85 |
| 6 consecutive days | 1.65 |
| 30 consecutive days | 1.60 |
| Contracts: Daily for 1 year | 1.55 |

(This listing continued on next page)

## POST—Continued

Billed at 1.60; rebates when earned.
Repeat discount rates for ads repeated within 6 days.

| | Per agate line |
|---|---|
| 10 to 24 lines | 1.10 |
| 25 lines or more | 1.[illegible] |

Careers & Instruction:

| | Per agate line |
|---|---|
| 1 time | 2.30 |
| 3 days in 1 week | 1.60 |
| 6 consecutive days | 1.50 |
| 30 consecutive days | 1.49 |

Contracts: Daily for 1 year ..... 1.30
Billed at 1.40. Rebate ..... .10
3 days per week for 52 weeks ..... 1.35
Billed at 1.60. Rebate ..... .25
Rebate when earned.

Employment agencies:
Rates also apply to Temporary Office Help agencies.

| | |
|---|---|
| 1 time | 1.36 |
| 3 days in 1 week | 1.24 |
| 6 consecutive days | 1.22 |
| 30 consecutive days | 1.10 |

Copy changes permitted on 6 & 30-day orders.
Display in Classified: no additional charge; minimum 50 lines.
Contracts: 3 time per week for 52 weeks ..... 1.26
Billed at 1.36. Rebate ..... .10
3 days per week for 52 weeks ..... 1.16
Billed at 1.24. Rebate ..... .08
Daily for 1 year ..... 1.12
Billed at 1.16. Rebate ..... .04
Rebate when earned.

Bulk Contracts (within 1 year):

| | |
|---|---|
| 1,000 lines | 1.26 |
| 5,000 lines | 1.24 |
| 10,000 lines | 1.20 |
| 15,000 lines | 1.17 |
| 25,000 lines | 1.12 |
| 30,000 lines | 1.09 |
| 40,000 lines | 1.06 |
| 50,000 lines | 1.03 |
| 70,000 lines | 1.00 |
| 100,000 lines | .97 |

Furnished Rooms, Children's Board, Pets (R.O.P.):

| | |
|---|---|
| 1 time | 2.75 |
| 2 consecutive days | 2.15 |
| 3 consecutive days | 1.75 |
| 4 consecutive days | 1.55 |
| 5 consecutive days | 1.50 |
| 6 consecutive days | 1.45 |
| 30 consecutive days | 1.40 |

Contracts: Daily for 1 year ..... 1.35
Billed at 1.45. Rebate ..... .10
Furnished Rooms—Hotels:
See Real Estate Rate.

Help Wanted—General:

| | Per agate line |
|---|---|
| 1 time | 3.50 |
| 3 days in 1 week | 2.90 |
| 6 consecutive days | 2.50 |
| 30 consecutive days | 2.35 |
| 3 days per week for 4 consecutive weeks | 2.80 |

Contracts daily for 1 year ..... 2.25
Billed at 2.35. Rebate ..... .10
Copy changes permitted on 6-day, 30-day and contract orders. Copy and size changes permitted on 30-day orders.
Display in classified, no additional charge; 14 line min.
Help Wanted—General

Display R.O.P.:
Minimum size 14 lines.

| | Per agate line |
|---|---|
| 1 time | 3.50 |

Contracts:

| | |
|---|---|
| 13 days or 1,000 lines (within 1 year) | 2.50 |
| 26 days or 2,500 lines (within 1 year) | 2.40 |
| 52 days or 5,000 lines (within 1 year) | 2.30 |

Stamps, Coins & Medallions; Boats:
Classified R.O.P.:

| | Per agate line |
|---|---|
| 1 time | 2.05 |
| 1 time per week (4 consecutive weeks) | 1.75 |
| 13 days within 1 year | 1.60 |
| 26 days within 1 year | 1.55 |
| 52 days within 1 year | 1.45 |
| Repeat (within 6 days) | 1.25 |

Stamps, Coins & Medallions; Pets; Boats; Fishing Boats; Bowling & Billiards:
Display R.O.P.

| | Per agate line |
|---|---|
| 1 time | 1.80 |
| 1 day per week (4 consecutive weeks) | 1.70 |
| 13 days within 1 year | 1.65 |
| 26 days within 1 year | 1.60 |
| 39 days within 1 year | 1.55 |
| 52 days within 1 year | 1.50 |

Repeat (within 6 days), 1.20 per line (10 lines minimum, no cuts; 14 line min., cuts allowed). Fishing Boats, 3 line minimum.
Summer and Winter Resorts, Country Board:
Classified R.O.P.

| | Per agate line |
|---|---|
| 1 time | 3.05 |
| 1 day/week, 4 cons. wks. on 4-time order | 2.55 |
| 3 day/week, 4 cons. wks., on 8-time order | 2.35 |
| 2 days, weekday and weekend, same copy | 2.60 |
| 6 consecutive days | 2.25 |

Display R.O.P. Minimum 14 lines:

| | |
|---|---|
| 1 time | 3.05 |
| 1 time/week, 4 cons. wks., same copy | 2.80 |
| Weekday ad repeated on Weekend | 1.20 |
| Contract 1,000 lines | 2.35 |

Weekend linage at 1.20 applies toward contract fulfillment, but is not rebateable.

CLASSIFIED DISPLAY

Art Galleries & Art Auctions, Antiques:
Appears in Weekend Magazine Section.
Minimum size—14 lines

| | Per agate line |
|---|---|
| 1 time | 2.00 |
| 1 time per week for 4 consecutive weeks | 1.95 |

Contracts:

| | |
|---|---|
| 13 days in 1 year | 1.90 |
| 26 days in 1 year | 1.85 |
| 39 days in 1 year | 1.80 |
| 52 days in 1 year | 1.75 |
| Ad repeated within 6 days | 1.40 |

Automotive:
Appears in or adjacent to Sports Section:

| | |
|---|---|
| 1 time | 2.75 |
| 2 days in wk. same size, per agate line, per insertion | 1.65 |

Repeat of 2-day comb., same size in 6 days ..... 1.05
Repeat insertions apply toward contract fulfillment but does not earn rebate.
Auto Exchange ad appearing within 6 days of Display ad 1.65.

Big Blue (1/2 page, single insertion) ..... 1.85
1,200 lines (1 page, single insertion) ..... 1.65
Contracts: Display ads billed in accordance with above rates; rebate as earned.

| Within 1 year: | Per agate line |
|---|---|
| 5,000 lines | 1.59 |
| 10,000 lines | 1.55 |
| 20,000 lines | 1.52 |
| 25,000 lines | 1.49 |

An additional .05 per line rebate earned on contract rates by advertisers using daily agate thru contract period. Agate applies toward contract fulfillment and earns rebate.
For advertisers with signed contract, all agate billed at contract rate.
Best Buys: For the Girls/Guys: (Daily) Health & Organic Products (Thursdays): (Display R.O.P.)
Minimum size 30 lines.

| Frequency Rates: | Per agate line |
|---|---|
| 1 time | 2.70 |
| 4 days in 4 weeks | 1.75 |
| 5-12 days in 1 year | 1.70 |
| 13 days in 1 year | 1.65 |
| 26 days in 1 year | 1.60 |
| 39 days in 1 year | 1.55 |
| 52 days in 1 year | 1.51 |

Combinations include choice of any 2 days within 6 publishing days.

| | Comb. per agate line |
|---|---|
| 1 combination | 2.50 |
| 4 cons. weekly combinations | 1.65 |

Must run first 4 weeks consecutive to be eligible for rest of rate structure.

| | Per agate line |
|---|---|
| 5-12 weekly comb. in 1 year | 1.60 |
| 13 weekly comb. in 1 year | 1.54 |
| 26 weekly comb. in 1 year | 1.51 |
| 39 weekly comb. in 1 year | 1.48 |
| 52 weekly comb. in 1 year | 1.40 |
| Repeat of 2-day comb. on 3rd day | 1.65 |
| 4 three-day comb. in 8 weeks | 1.45 |

The following bulk space linage credit can be earned in addition to above. When 2,500 lines are completed, .06 per line linage credit at rate earned, to be run in 1 week; when 5,000 lines are completed (if no previous linage credit has been taken), .12 per line linage credit at rate earned, to be run in 1 week. Rebate linage credit does not apply to contract fulfillment.
Hi-Fi, Radio, TV, Cameras & Photographic Equipment—(R.O.P.):
Classified R.O.P. min. size 2 lines reg. classified style. Display R.O.P. min. size—14 lines.

| | Per agate line |
|---|---|
| 1 time | 2.35 |
| 3 or more days in 1 week | 2.20 |
| 6 cons. days | 2.10 |

Contracts:

| | |
|---|---|
| 13 days or 1,000 lines in 1 year | 2.10 |
| 26 days or 2,500 lines in 1 year | 1.95 |
| Daily or 5,000 lines in 1 year | 1.80 |

Bulk space retail contract also available.
Mail Order Merchandise (Shop at Home Bazaar):
(Display R.O.P. or under Shop At Home Bazaar Heading)

| | —Per agate line— Daily | Saturday |
|---|---|---|
| Open rate | 1.59 | 1.20 |
| 1,200 lines | 1.30 | 1.10 |
| 2,500 lines | 1.27 | 1.07 |
| 5,000 lines | 1.23 | 1.02 |
| 10,000 lines | 1.19 | .98 |

Bulk space rates available.
Merchandise.
Set 9-6 picas-pts. col. minimum size 14 lines.

| | |
|---|---|
| 1 time | 2.55 |
| 2 times in 6 days (same copy), comb. rate | 3.42 |

Merchandise or Business Service ads appearing on Financial Pages—rates on Financial Rate Card apply.
Real Estate:
Display R.O.P.—minimum size 14 lines:

| | Per agate line |
|---|---|
| 1 time | 2.35 |
| 2 consecutive Fridays | 1.90 |
| 3 or more cons. Fridays | 1.80 |

Combination Rate:

| | Per agate line |
|---|---|
| Friday ad repeated in Sat. (Weekend) | 1.10 |

Combination ads apply toward contract fulfillment but do not earn rebate.
Contracts:

| | |
|---|---|
| 1,000 lines in 1 year | 2.37 |
| 2,500 lines in 1 year | 1.77 |
| 5,000 lines in 1 year | 1.71 |
| 10,000 lines in 1 year | 1.68 |
| 15,000 lines in 1 year | 1.65 |
| 20,000 lines in 1 year | 1.59 |
| 25,000 lines in 1 year | 1.53 |

Rates also apply to Commercial & Industrial Real Estate advertising appearing on Tuesdays.
Closing time: Reservations and copy, noon, day before.
School Directory:
Available Saturday Weekend edition. Schools & Colleges rates apply. Set on 2 cols., 22-3 picas-pts., special display type permitted; no cuts or borders. Minimum 2 lines on 2 columns.
Schools & Colleges, Camps, Dancing Studios:
Display R.O.P. minimum size 14 lines: Per agate line

| | |
|---|---|
| 1 time | 2.45 |

Contracts:

| | |
|---|---|
| 13 days in 1 year | 2.30 |
| 26 days in 1 year | 2.20 |
| 52 days in 1 year | 2.05 |

Bulk Rates:

| | Per agate line |
|---|---|
| 600 lines (1/2 page), single insertion | 1.90 |
| 1,200 lines (1 page), single insertion | 1.70 |

Combination Rates:
Advertisers may repeat identical ad within 6 days at rates listed below. Minimum size 14 lines (except School Directory).

| | |
|---|---|
| 1 time | 1.55 |
| 13 days in 1 year | 1.50 |
| 26 days in 1 year | 1.40 |
| 52 days in 1 year | 1.35 |

Minimum space: Classified and Classified Display, 2 lines; (Real Estate and Apartments) agate type 3 lines; ads with borders, where permitted, 14 lines (one inch).
Measurements and Charges: Ads charged on basis of actual space occupied. Abbreviations permitted. Ads up to and including 10 lines charged on agate count line basis; ads more than 10 lines charged agate rule measurement, 1-2-3 col. ads over 175 lines deep charged full column.

11. SPECIAL PAGES, FEATURES
See Tuesday, Wednesday.

12. MINIMUM DEPTH R.O.P.
One col. 14 lines; 2 cols. 35 lines; 3 cols. 50 lines; 4 cols. 75 lines; 5 cols. 100 lines, 6 cols. 100 lines. Any 4, 5 or 6 col. ad more than 165 lines deep charge full column. (200 lines). Any 1, 2 or 3 col. ad more than 175 lines deep charged full column (200 lines).

13. CONTRACT AND COPY REGULATIONS
See Contents page for location of regulations—Items 2, 3, 6, 10, 11, 12, 13, 14, 15, 19, 25, 32, 34, 35.

14. CLOSING TIME
Daily: B/w Reservations noon, 2 days before publication. Copy and orders 8:00 p.m. 2 days before publication. Monday issue closes noon preceding Friday. Hotel and Resort Playtime sections: Tuesday and Thursday. Reservations before Thursday 5:00 p.m. Copy and orders before Friday 9:00 p.m. preceding Tuesday issue. Reservations before Tuesday 5:00 p.m. Copy and orders before Wednesday noon preceding Thursday issue.
Special Issues: as announced in Special Bulletins R.O.P. color: Reservations 4 days in advance of date of publication. (Subject to availability.)
Weekend Edition. Reservations before Thursday 3:00 p.m. Copy and order before Friday 9:00 p.m. preceding publication date. Magazine Section Weekend Edition. Reservations before Tuesday 5:00 p.m. Copy and orders before Friday 5:00 p.m. preceding publication date.

15. MECH. MEASUREMENTS (Rotary Letterpress)
6/11/5—6 cols/each col. 11 picas/3 pt. col. rule. Lines to col. 200; page 1200; dbl. truck 2400.

16. CIRCULATION
Established 1801. Per copy daily .15; Saturday (Weekend Edition) .15.
Net Paid—ABC 9-30-72 (Newspaper Form) Max Min

| | Total | CZ | TrZ | Other | | |
|---|---|---|---|---|---|---|
| ExSat | 625,162 | 571,803 | 42,221 | 11,138 | 5.97 | 4.80 |
| Sat | 861,877 | 802,251 | 47,136 | 12,490 | 9.26 | 8.46 |

For county-by-county and/or metropolitan area breakdowns, see SRDS Newspaper Circulation Analysis.

New York Times, Feb. 12, 1976, p.64, col. 1

# REPORTERS AT POST BAR USE OF BYLINES

Reporters on The New York Post refused yesterday to have their names printed above the stories they wrote for the paper, and they said this so-called "byline" strike would last 10 days.

Post reporters say that the byline strike was agreed upon among them, as a matter of principal, to protest the cancellation by the paper's publisher of consumer articles written by one reporter, Steve Lawrence, about supermarkets. Five such articles have already appeared in recent weeks, and more were scheduled, but were canceled, the reporters say.

The reporters said that because of the articles, one supermarket chain had canceled some advertising in The Post and several other had threatened to do so.

They contend that Dorothy Schiff, editor in chief and publisher of the paper, told them at two meetings, one on Friday and one on Monday, that the newspaper could not afford to offend supermarket advertisers. Mrs. Schiff's office said "no comment" yesterday to the allegations.

Under the terms of The Post's contract with the Newspaper Guild of New York, its reporters have a contractual right to demand that their names be left off stories that they write. Reporters at The Daily News have a similar contractual right. Reporters at The New York Times do not.

The "byline strike" at The Post was not started by the guild as a formal action, but rather by the reporters informally.

Exhibit H

MINNEAPOLIS—(Continued)

GAMBLE-SKOGMO, INC.—(Cont'd)

Gamble Credit Corp.
One E. First St.,
Reno, Nev.
C. R. Bronson (Pr)

Gamble Development Co.
5100 Gamble Dr.,
Minneapolis, Minn.
Edwin Wack (Pr)

Gambles Continental State Bank
441 Wabasha,
St. Paul, Minn.
David A. Heider (Pr)

Gamble Dept. Stores, Inc.
5000 W. Roosevelt Rd.,
Chicago, Ill.
R. E. Riley (Pr)

Gambles Import Corp.
2777 N. Ontario St.,
Burbank, Calif.
H. D. Nelson (Pr)

Gambles Insurance Co.
5100 Gamble Dr.,
Minneapolis, Minn.
Louis E. Dolan (Pr)

Gambles C & M Leasing Co.
5100 Gamble Dr.,
Minneapolis, Minn.
Robert A. Miesen (Pr)

Gambles Datamation Center
2709 N. Ontario St.,
Burbank, Calif.
R. B. Hillery (Pr)

Gambles International Leasing Corp.
5100 Gamble Dr.,
Minneapolis, Minn.
Joseph G. Rousseau (Pr)

Red Owl Stores, Inc.
215 Excelsior Ave. E.,
Hopkins, Minn.
Melvin Roth (Pr)

Snyder's Drug Stores, Inc.
215 Excelsior Ave. E.,
Hopkins, Minn.
Glenn R. Anderson (Pr)

—Direct
Nov.-Dec.
(Media: 1-2-3-4-6-7-11a-11b-13-14-18-20-28-32-35)
Distr.: 295 Dept. & Specialty Stores, 183 Food & Drug Stores, 70 Mass Merchandising Stores, 180 Canadian Stores, 7 Catalog Sales Offices, 3,205 Authorized Dealer Stores, 3,940 Total Units

GENERAL MILLS, INC.
9200 Wayzata Blvd.,
Minneapolis, Minn. 55440
Tel.: 612-540-2311
Approx. Sales: $1,593,000,000
Approx. Number Employees: 40,651
Products
Gold Medal Kitchen Tested Flour, Gold Medal Wondra Instantized Flour, Red Band Flour, Drifted Snow Flour, Sperry Cake & Pastry Flour, La Pina Flour, Purasnow Flour, Red Star Flour, White Deer Flour, Rex Flour, Bakery Flour, Export Flour, Purity Oats, Softasilk Cake Flour; Bac*o's; Casserole Mixes; Saff-O-Life Safflower Oil; Betty Crocker Potato Prods.; Softasilk; Bisquick; Pie Crust Sticks; Graham Cracker Pie Crust; Pie Crust Mix; Buttermilk Pancake Mix; Muffin Mixes; Bugles, Crisp-i-Taters, Pizza Spins, Cheddar Taters, Chipos, Cheese Savory Squares; Ham Savory Squares; Onyums, Dipped Taters, Hamburger Helper; Tuna Helper; Cooking For Two Dinner Mixes; Layer Cake Mixes; Angel Food Cake Mixes, Chiffon Cake Mixes; Bundt Cake Mixes; Gingerbread Mix; Fudge Brownie Mix; Choc. Chip Fudge Brownie Mix; German Choc. Brownie Mix; Date Bar Mix; Walnut Brownie Mix; Coconut Macaroon Mix; Choc. Chip Butterscotch Brownie Mix; Vienna Dream Bar; Ready-to-Spread Frostings; Instant Frosting Mixes; Fluffy Frosting Mixes, Whipped Frosting Mixes; Pudding Cake Mixes; Ready-To-Serve Puddings; Boston Cream Pie Mix; Betty Crocker Cookbooks; Snackin Cake Mixes; Wheaties, Kix, Cheerios, Trix, Frosty O's, Total; Cocoa Puffs; Country Corn Flakes, Lucky Charms, Baron Von Redberry, Sir Grapefellow, Kaboom, Count Chocula, Franken-Berry, Buc-Wheats, Corn Total, BooBerry, Fruit Brute; Mr. Wonderfull's Surprize, Fun Pack, Hotel & Restaurant Service; Sno Flok, O-Cel-O Sponge Products, Institutional Baking Mixes, Vital Gluten, Vitamins, Special Diet Foods, Starches, Guar, Versamid & Versalon Polyamide Resins, Fatty Nitrogen Derivatives and Sterols, Epoxy Resins, Milvex Resins, Amphoteric Surfactants, DDI Brand, Diisocyanate, LIX Reagents

James P. McFarland (Chm Bd & Chief Exec Officer)
J. A. Summer (Vice Chm & Chief Devel & Fin Officer)
Harry Porter (Asst to Pr)
Patricia LaBerge (Asst to Chm Bd)
E. Robert Kinney (Pr & Chief Oper Officer)
Mercedes Bates (VP-Consumer Center & Betty Crocker Kitchens)
H. B. Atwater, Jr. (Exec VP-Consumer Foods Grp, The Gorton Corp Adv & Mktg Services & Trade Policy & Customer Rel)
J. W. Feighner (Exec VP & Pr-Tom's Foods, Ltd., The Donruss Co. & Consumer Specialties Div)
E. E. Woolley (Exec VP-Away from Home Eating Venture, Real Estate & Transp Dept)
D. F. Swanson (Exec VP-Craft Games & Toy Div-Intl Div-Fashion Div Direct Mktg Div)
W. Scott Supernaw (Exec VP-Travelworld, Inc.)
Paul L. Parker (Sr VP & Dir-Employee & Pub Rel)
H. H. Porter, Jr. (VP-Fin & Tr)
J. S. Fish (VP-Consumer Communications & Dir-Mktg Services)
John V. Luck (VP & Tech Dir)
M. M. Benidt (VP & Dir-Export & Overseas Milling Dept, Intl Div)
E. K. Smith (VP & Controller)
J. P. Eckert (VP-Intl Opers Craft Game & Toy Div)
George Gaines (VP & Joint Mgr Dir-European Opers)
W. R. Humphrey (VP & Exec Dir-Gen Mills Foundation)
Cyrus Johnson (VP-Social Action)
Howard L. Ross (VP & GM-Grocery Products Sls Div)
Gordon W. Ryan (VP & Dir-Trade & Customer Rel-Grocery Prod Div)
Fred Blumers (VP & GM-Pkg Foods Opers Div)
John F. Finn (VP-Sec & Gen Counsel)
Clifford L. Whitehill (VP & Asst Sec & Asst Tr)
J. T. Gerlach (VP & Dir-Corp Growth)
Verne C. Johnson (VP & Dir-Corp Planning)
J. Robert Roach (VP & Dir-Res & Devel-Consumer Foods Group)
Stanley V. Tabor (VP-Corp Real Estate)
W. K. Smith (VP & Trans Dir)
James R. Pratt (VP & Dir-Taxes)
D. G. McPherson (VP-Dir Quality Control Nutritional Policy & Food Safety)
Robert K. Swanson (Grp VP-General Mills U.K.-Europe Ltd.)
Ross N. Clouston (VP & Pr-Gorton Corp)
Michael L. Tracy (VP & GM-Consumer Specialties Div & Pr-Goodmark, Inc.)
James Simms (VP & Dir-Mktg & Sls-Goodmark Inc.)
W. R. Barry, Jr. (Grp VP-Betty Crocker Grocery Prods Sls, Gay Gem Inc. Corp. Mktg Res)
F. William Graham (Grp VP-Fashion Div)
A. R. Schulze (Grp VP-Golden Valley, Gorton Corp)
F. C. Blodgett (Grp VP-Big G, Sperry, Package Foods Opers & Procurement Divs)
J. G. Fifield (VP & Golden Valley Div)
D. L. Knutzen (VP & GM-Betty Crocker Div)
R. W. Hatch (VP & GM-Protein Div)
Preston Townely (VP & GM-Big G Div)
John D. Herrick (VP & GM-Canadian Opers)
Darryl J. Woodland (VP & GM-Procurement Div)
James J. Feeney (VP & GM-Sperry Div)
George B. Stephan (VP & Dir-Admin & Grp Controller Direct Mktg Craft Game & Toy Divs)
D. M. Friborg (VP-Labor Rels)
J. L. Frost (VP-Personnel Services)
R. P. Fouse (VP & Dir-Mktg Services)
Dr. Ivy M. Celender (VP-Nutrition Service)
Marylee Duehring (VP-Betty Crocker Kitchens)
C. C. Hicks (Mktg Dir-Child Cereals)
B. C. Burnham (Mktg Dir-New Prods-Betty Crocker Div)
R. A. Schaefer (Dir-Pie Shops)
S. P. Chase (Mktg Dir-Golden Valley Div)


1. Daily Newsp. 2. Cons. Mag. 3. Outdoor Signs 4. Posters 5. Transit Adv. 6. Business Publ. 7. Farm Publ. 8. Foreign Lang. Newsp. 11a. 11b. Direct Mail to Consumer-through Dealers 11c. Direct Mail to Business Estab. 13. Novelties 14. Catalogs & Directories 15. Theatre

Exhibit T

M. E. Cushmore (Dir-Mktg, New Enterprises, Big G Div)
D. J. McMahon (Mktg Dir-Golden Valley Div)
F. C. Waller (Asst to Exec VP. Craft Game & Toy Div)
J. [illegible] McLane (GM-Dir Mktg Div)
D. [illegible] Carlson (VP & Pr-General Mills Chemical, Inc. Sub)
R. F. Shreve (Mktg Dir-Food Ingredients)
R. J. Dunn (Mktg Dir-Food Ingredients)
O. A. Moe (Dir-Mktg-Fine Chemicals)
Robert J. Blake (Dir-Creative Services)
T. P. Kennedy (Dir-Betty Crocker Enterprise)
A. W. Hanson (AM-General Mills Chemical)
R. F. Bodeau (Dir-Media & Shows)
W. R. Kost (Dir-Consumer Prom Dept)
D. W. Latterell (Dir-Graphic Services)
J. H. Weaver (Creative Dir)
L. D. Gibson (Mktg Res Dir)
A. Louis Champlin (Dir-Publ Rel)

Divisions:

Consumer Specialties, Raleigh, N. C.
Craft, Game & Toy Div., Minneapolis, Minn.
Direct Marketing, Minneapolis, Minn.
Fashion Div. Minneapolis, Minn.
Consumer Foods Group Minneapolis, Minn.
Big G. Div.
Betty Crocker Div.
Sperry Div.
Golden Valley Div.
Consumer Foods Sales Div. Minneapolis, Minn.
International Div. Minneapolis, Minn.
Package Foods Operations Div. Minneapolis, Minn.
Procurement Div. Minneapolis, Minn.
Protein Div. Minneapolis, Minn.

Subsidiaries:

GoodMark, Inc. Raleigh, N. C.
Toms Foods Ltd. (See Separate Listing) Columbus, Ga.
Red Lobster Inns of America, Inc.
Slim Jim, Inc.
Palitoy, Ltd.
Kenner Prods. Co. (See Separate Listing) Cincinnati, Ohio
The Donruss Co. Memphis, Tenn.
Parker Bros. (See Separate Listing) Salem, Mass.
Model Products Mt. Clemens, Mich.
Pioneer Products, Inc. Ocala, Fla.
Gold Medal Insurance Co.
General Mills Cereals, Ltd., Canada
General Mills Chemicals, Inc. (See Separate Listing)
Toronto Macaroni & Imported Foods Ltd. Toronto, Ont., Can.

(Continued—next page)

MINNEAPOLIS—(Continued)

GENERAL MILLS, INC.—(Cont'd)

The Gorton Corp., (See Separate Listing) Gloucester, Mass.
Vogt Jewelers, Inc. New York, N. Y.
Dexter Thread Mills (See Separate Listing) Elgin, Ill.
David Crystal, Inc. (See Separate Listing) New York, N. Y.
Kimberly Knitwear, Inc. (See Separate Listing) New York, N. Y.
Siltex Corp. (Siltex)
Eddie Bauer, Inc. Seattle, Wash.
Gorton Travel Organization Chicago, Ill.

Advertising Agencies

Needham, Harper & Steers, Inc. 401 N. Michigan Ave., Chicago, Ill.-(Betty Crocker Dessert Mixes, Bisquick & Bac*Os)
—J. L. Isham (Pr)
—B. B. Vedder (Sr Mngng Partner)
—Wm. Quigley (Acct Dir)

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Needham, Harper & Steers, Inc. 909 3rd Ave., New York, N. Y.-(Fruit Helper, Crisp'n Tender, Other New Prods)
—Frederick D. Sulcer (Pr)

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—Dancer-Fitzgerald-Sample, Inc., 347 Madison Ave., New York, N. Y.-(Gold Medal Kitchen Tested Enriched Flour, Cheerios, Wheaties, Country Corn Flakes, Corn Total, Total, Mr. Wonderfull's Suprise, Red Band Flour, Gold Medal Wondra Instantized Flour & Other Adv. Brands Flour Child Cereals)
—S. B. Upson (Chm)
—P. F. McSpadden (Pr)
—R. M. Whidden (Sr VP)
—E. F. Bunn (VP)

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—Dancer-Fitzgerald-Sample, Inc., 1010 Battery St., San Francisco, Calif.-(Drifted Pancake Mix, La Pina Flour, Hot Cereals, Drifted Snow Flour)
—L. Stern (Acct Supvr)

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—Campbell-Mithun, Inc. 1000 Northstar Center, Minneapolis, Minn.-(Buc* Wheats, Betty Crocker Pie Shops, Betty Crocker Potato Prods., Breakfast Squares, Coupon Plan, Protein Plus, Quick'n Hearty Dinners, Nature Valley Granola)
—Bruce Sutherland (Acct Supvr)
—J. Carpenter (Acct Supvr)

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—Ronalds-Reynolds & Co. 151 University Ave., Toronto, Ont., Can.-(Betty Crocker Mixes)

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—Dancer-Fitzgerald-Sample (Canada) Ltd. 200 St. Clair Ave., W., Toronto, Ont.-(Cereal Brands)

---

—Wells, Rich & Greene, Inc. 575 Madison, New York, N. Y.-(Shaped Snacks, Chipos, Betty Crocker Hamburger Helper, Tuna Helper & Casserole Prods.)
—Irving Sloan (Mngmt Supvr)

---

—Humphrey Browning MacDougall One Beacon St., Boston, Mass.-(Parker Bros. Div., Model Prods. Corp., the Lionel Toy Div., Craft Master)

---

—McKinney & Silver Adv. 333 Fayetteville St., Raleigh, N. C.-(Jesse Jones Activities)

---

—Mark Moran Adv. 22 Eighth St., Atlanta, Ga.-(Red Lobster Inns)

---

—Bozell & Jacobs, Inc. 15 S. First St., Minneapolis, Minn.-(Food Service Div, New Prods)

---

—D'Arcy-MacManus & Masius 750 S. Mississippi River Blvd., St. Paul, Minn.-(Chemical Div. Products)
—James Rahders (Acct Supvr)

---

—Pearson & McDonald Inc. 171 Newbury St., Boston, Mass.-(Gorton Corp. Grocery Div.)

---

—Wattenmaker Agency 1220 Huron Rd., Cleveland, Ohio-(Gorton Union Jack, Blue Water Seafoods)

---

—Altman, Stoller, Chalk 641 Lexington Ave., New York, N. Y.-(Monocraft Prods)

---

—Leonard M. Sive & Assoc., Inc. Broadway at Eighth, Cincinnati, Ohio-(Kenner Products Co.)
—Robert Grannon (Acct Supvr)

---

—Now Inc. 415 Lexington Ave., New York, N. Y.-(David Crystal, Inc.)

---

—Jack Cantwell & Assoc. 420 Lexington Ave., New York, N. Y.-(Slim Jim Meat Snacks-GoodMark Div.)
—Jack Cantwell (Acct Supvr)

---

—Daniel & Charles, Inc. 261 Madison Ave., New York, N. Y.-(Gorton Corp.)

---

(Approx.: $63,300,000)
(Media: 1-2-3-6-7-11c-14-17-18-20-25-26-28-29-30a-30b-32-33)
Distr.: Natl.; Intl.

**GENERAL MILLS CHEMICALS, INC.**

4620 W. 77th St., Minneapolis, Minn. 55435
Tel.: 612-540-2311
Approx. Sales: $100,000,000
Approx. Number Employees: 1,200
Polyamide, Epoxy & Polyurea Resins, Sterols, Tocopherol, Vitamin A & E, Natural &

De
me
Gl
Fr
Ge
Sp
D. W
Dr. V
Ind
Dr. S
Ch
A. W
—D'A
750
St.
—I
Apr.
(App
Mis
(Med
Distr

GIFT S
12717
Min
Tel.: (
"Gift
Pro
Curtis
Edwin
Tom J
—Ad
Hig
Min
(Medi
Distr.

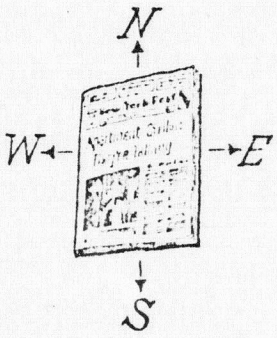
GOLD
12755
Tel.: (
Appro
"Gold
C. L.
H. W.
H. Gl
SM
Lloyd
John
John
Bobb
Tom J
—Ada
1277
Min
Sept.
(Appr
(Medi
Distr.:

GOODA
7557
Tel.: 6
Appro
Appro
Starta
Pow
Plan
Edwin
Richar
Ray A
Keith

1 Mail to the Consumer
tator Events Programs

17. Ntwk. Radio 18. Spot Radio 19. Foreign Lang. Radio 20. Exhibits 21. Product Samples 25. Indus
30a. Ntwk. TV 30b. Spot TV 32. Point of Pur. 33. Newsp. Distr. Mags. 34. Adv. in Foreign Countries

# Have the New York Post mailed to your vacation address!




New York Post, Monday
June 28, 1976, p.2

East, West, North or South, wherever you're Vacationing, whatever the season, you can have the Post delivered by mail.

**Use the Handy Form Below**

Keep in touch with the news from home. Enjoy your favorite Post features and columnists . . . and have a wonderful vacation!

Summer Subscription Rates
(In the U.S. only)

| | |
|---|---|
| 2 weeks | $4.00 |
| 1 month | 6.25 |
| 6 weeks | 10.25 |
| 2 months | 12.50 |
| 3 months | 18.00 |

Subscription Dept., New York Post
210 South St., N.Y.C. 10002

Please send the NEW YORK POST at your summer subscription vacation rates to:

Name_____
Please print

Vacation Address_____
Please print

Town_____ State_____ Zip code_____

**send check or money order with this coupon.**

From_____ To_____
starting date ending date

Enclosed is (amount)_____
See rates above: check or money order must accompany Coupon.

☐ Please check if you are a home delivery subscriber.

**Subscription will start 4 working days after receipt of order.**

Exhibit J

# City Accuses Phone-Order Food Service of $4M Gyp

By STEVE LAWRENCE

Galaxy Foods Inc. was supposed to be a phone-order food service. And a cinch to sell.

After all, wouldn't most people like to order groceries from home, phone their order in and have the stuff delivered free right to the door?

Pilar Maldonado, a Queens housewife, though it "was a great idea and it seemed legal to me."

And Ralph James, a retired Queens truck driver, was even more enthusiastic. "You'd want to rob, steal or borrow, to get in on it," he said sadly the other day. "It seemed like the chance of a lifetime."

The city's Consumer Affairs Dept., though, says Galaxy Foods was just another shoddy pyramid sales swindle. The agency went to State Supreme Court today to shut Galaxy down and force its nine chief executives to cough up $1.1-million in penalties and refunds to the 800 New Yorkers who allegedly got taken.

In a pyramid sales gyp, a few guys at the top clean up from the commissions they get when people invest in the "company" as distributors. The money is in selling distributorships, not products, so the people at the bottom lose their shirts because all they've bought is the right to sell a shoddy or non-existent product, and the right to recruit more investors.

Consumer Affairs charges that 800 people put up as much as $7000 apiece to become Galaxy Food Distributors. But the vast food delivery plan these people were supposed to be selling never existed.

People like Mrs. Maldonado, who thought they were buying into a growing food business, never had a chance.

"You know people were happy when I would phone them and explain this thing,"

*Continued on Page 65*

Exhibit K

New York Times, January 5, 1976, p.27, col.1

# POST-GUILD TALKS FACE A DEADLINE

## Union Seeking Same Raises as at Times and News

By EMANUEL PERLMUTTER

Officers of the Newspaper Guild and The New York Post negotiated last night in an effort to reach a contract settlement before the union's strike deadline of 6 A.M. today.

The union, which represents 420 news, advertising and business employees at The Post, is seeking the same basic wage increases that were contained in settlements it recently achieved with The New York Times and The Daily News. These were weekly raises of $25 a week in the first year and $20 a week additional in each of the next two years of a three-year contract retroactive to last March 30.

Theodore W. Kheel was acting as mediator in the negotiations, which were taking place at Automation House, 49 East 68th Street. The guild had originally threatened to strike The Post Dec. 18, but postponed the date at the request of Mr. Kheel, who said he had other commitments.

Although settlements with other newspaper have usually conformed the pattern in the New York Guild negotiations with others, the present negotiations have been complicated by The Post's insistence that recent losses in circulation and advertising had made it impossible for it to match the other agreements.

Neither the guild nor The Post would comment officially on the status of the bargaining. It was learned authoritatively, however, that The Post had offered to pay the $25 wage increase for the first year but had contended it could not pay the second- and third-year raises of $20.

Dorothy Schiff, editor in chief and publisher of The Post, and Harry Fisdell, executive vice president of the guild, headed the negotiators last night.

Unions at the Post representing stereotypers, paperhandlers, electricians, machinists and mailers have pledged support to the guild if it struck the paper. The pressmen have made no commitments, and the members of the typographical union have an existing contract at The Post, The Times and The News.

The Post negotiates both individually with its unions. The Times and The News bargain jointly through the Publishers Association of New York City. Already reached agreements with the guild, the stereotypers, the photoengravers [illegible]

New York Times, January 6, 1976, p.27, col.4

# Strike at Post Is Averted; Kheel to Draft Settlement

By DAMON STETSON

A strike threatened at The New York Post was averted yesterday when negotiators for the Newspaper Guild and the paper agreed to have Theodore W. Kheel, the mediator, recommend the "best procedures" for achieving a settlement.

The decision, announced three hours after the 6 A. M. strike deadline, postponed indefinitely the strike threat of the guild which represents 410 news, advertising, circulation and clerical employees of the paper.

Mr. Kheel, who had met with the two sides throughout Sunday night, said he hoped to have his recommendations ready in several weeks.

In view of the complexities involved in negotiating a contract that would fairly take into account the needs of the employees and the financial problems of The Post, he said, he had agreed to study and recommend procedures to enable the parties to attain those goals.

### Basic Pattern Sought

The strike deadline of 6 A.M. was initially extended to 8 A.M. and later to 9 A.M. yesterday as the two sides attempted to resolve their differences. But shortly before 9 A.M. the guild negotiating committee voted 8 to 7 to put aside the strike threat and await Mr. Kheel's recommendations.

The guild had originally sought an agreement incorporating the same basic money pattern contained in earlier settlements with The Daily News and The New York Times—$25 a week increases in the first year, $20 a week in the second and $20 a week in the third year of a three-year pact. Sources close to the talks said that The Post would have agreed to the first-year increase, but wanted cost savings in the second and third years. Traditionally, at all three papers, the increases have been distributed under a formula providing that higher-paid employees get larger increases and lower-paid employees get smaller ones.

### Comment Declined

Guild sources said that the union had been able to examine Post financial figures and on that basis had made a third-year proposal that would have provided "some relief" for the newspaper. But there was no resolution of the second year's terms, these sources said.

There was no immediate comment from The Post. Under the old contract the top minimum rate for reporters, photographers and advertising salesmen was $379.80 a week and for various editors, $391.80 a week.

The craft unions, except for the pressers, are also involved in contract negotiations with The Post. Their contracts and that of the guild had termination dates of March 30, 1975, but the pacts have been extended.

Exhibit L

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| CARL E. PERSON, | : | 76 C 1217 (JFD) |
| Plaintiff, | : | IRA J. EHRLICH AFFIDAVIT |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK)

IRA J. EHRLICH, being duly sworn, deposes and says:

1. I am a legal assistant employed by the plaintiff, Carl E. Person; I reside at 510 Broome Street, New York, N.Y. 10013, am fully familiar with the facts stated herein, and make this affidavit in support of the plaintiff's motion for a preliminary injunction.

2. On June 22, 1976, at approximately 3:50 P.M., I delivered a form letter from Carl E. Person (individually addressed to defendant) to the Advertising Department of the New York Post Corporation, requesting the rate for publishing the Thee tombstone advertisement. A copy of the advertisement and Thee Offering Circular, dated June 25, 1976, were included with the letter (in the form as annexed to plaintiff's complaint as Exhibits A and B).

3. I was introduced to an employee of defendant's financial advertising department (who the following day identified himself to me as Mr. Richard Le Long) and I presented the papers to him. Mr. Le Long read Mr. Person's letter and then turned to the Offering Circular and glanced at the cover page, then thumbed through the remainder of the circular. Mr. Le Long told me that the Offering Circular would have to be approved by the Securities and Exchange Commission before the New York Post could consider running the offered tombstone advertisement. I referred him to Mr. Person's letter pointing out that the offering could commence on June 25th by order of the S.E.C.

4. Mr. Le Long re-read the letter, again glanced through the Offering Circular, then asked me if there was a provision in the Offering Circular for the refund to the investors of any collected sums in the event that the issue was not completely sold. I told him that I recalled seeing a statement in the Offering Circular dealing with the return of collected funds, but that I could not answer any questions on the subject of the offering itself and suggested that he contact Mr. Person. He repeated his question, asking for me to point out where in the Offering Circular there was any provision for refunds of moneys to investors in the event the whole issue was not sold; and Mr. Le Long turned the pages of the circular once again. I again suggested that he telephone Mr. Person, which Mr. Le Long said he would do. I can point out to the Court that risk factor 12 states:

> "The securities of the Issuer are being offered on a straight 'best-efforts' basis and if insufficient funds are raised from the offering the Issuer may not be in a position to fully prosecute the Thee Action. Subscribers' funds will be returned in the event that the funds available to the Issuer are insufficient to prosecute the action on a reasonable basis."

5. Mr. Le Long then told me that in any event the Offering Circular would have to be examined by a committee of the New York Post before the tombstone advertisement could be published. I then left, at 4:05 P.M. The conversation with Mr. Le Long lasted about 2-3 minutes. No question whatsoever was raised about the method or time of payment for the advertisement.

6. The next day, Wednesday, June 23, 1976, at 10:10 A.M., Mr. Le Long telephoned Mr. Person's office concerning the offered tombstone advertisement. In Mr. Person's absence I spoke with Mr. Le Long, who told me his name (which I did not know before) and told me that the New York Post was "rejecting the ad" as "not suitable" for publication in the New York Post. This telephone conversation lasted about 30 seconds. I advised Mr. Person of the rejection on the same day, by telephone (Mr. Person was in Philadelphia at the time).

Ira J. Ehrlich

Subscribed and sworn to before me
this 30th day of June, 1976.

Notary Public

ABE KURZER
Notary Public, State of New York
NO. 41-7388900 Qual. in Queens Co.
Certificate filed in New York County
Term expires March 30, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - - -x

| | | |
|---|---|---|
| CARL E. PERSON, | : | 76 C 1217 (JTD) |
| Plaintiff, | : | CHRISTIAN THEE AFFIDAVIT |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

- - - - - - - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK)

CHRISTIAN THEE, being duly sworn, deposes and says:

1. I reside at 76 State Street, Brooklyn, N.Y., an the Issuer described in the Offering Circular, dated June 25, 1976, a copy of which is annexed as an exhibit to the plaintiff's complaint herein, have read the complaint, am fully familiar with the facts stated herein, and make this affidavit in support of plaintiff's motion for a preliminary injunction to prohibit defendant from publishing any commercial tombstone advertising for registered and Regulation A public offerings unless defendant publishes my tombstone advertisements (and certain others).

2. I stand ready to join this action as a plaintiff, if necessary.

3. My public offering became effective for sale on June 25, 1976, by order of the New York Regional Office of the Securities and Exchange Commission. My purpose in making the offering is to raise the money needed to properly

present my claims. (Actually, only the income from the money to be raised will be used in this way; the principal will be invested in short-term U. S. Government securities, to ensure that investors will not lose any of their money invested.) I do not have sufficient resources of my own or any immediate prospects for sufficient income to be able to pay for the reasonable out-of-pocket costs of litigation which my attorney, the plaintiff herein, says I should spend to properly pursue the claims being made in my complaint against General Mills, Inc., General Mills Fun Group, Inc. (formerly named Parker Brothers, Inc.) and Marvin Glass & Associates. These claims are described briefly in my offering circular. I have no savings or other assets except for perhaps several hundred dollars in combined savings and assets (and a lot of my paintings and various board games which I am not able to sell for a reasonable price). My combined assets amount to substantially less than the aggregate amount I presently owe. Accordingly, I am relying upon the public offering, which has already commenced, to obtain the financing I need to pursue my two actions.

4. The delays caused by defendant New York Post Corporation's refusal to run my tombstone advertising is preventing my offering from being sold, by making the offering "stale" and less attractive to investors who, I understand, often avoid offerings which do not appear to be selling well, and because defendant's newspaper is one of the few places, according to my attorney, which publishes tombstone advertising for the industry. Also, I understand that various other newspapers in the area have refused to accept my ads. Because of the refusal by defendant and other newspapers to run my tombstone advertising, my public offering is not succeeding. Only a few inquiries have come in at this time, about 25 in all, since June 25, 1976 (generated by a Daily News or UPI story, I believe, about the offering of shares in a lawsuit).

WHEREFORE, I respectfully request that this Court grant the preliminary injunction requested by plaintiff so that I may be able to proceed with my own actions on a properly financed basis, to eliminate delays in getting to trial, to obtain available evidence through investigations, to record available recollections through depositions, and so forth, rather than to wait until some indefinite time which could be too late to be of any help to me.

Christian Thee

Christian Thee

Subscribed and sworn to before me
this 29th day of June, 1976.

Notary Public

IRA J. EUTUCH
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in New York County
Commission Expires March 30, 1977

(1st) AMENDED COMPLAINT WITHOUT EXHIBITS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - - -x

| | | |
|---|---|---|
| CARL E. PERSON, | : | |
| Plaintiff, | : | 76 C 1217 (JFD) |
| -against- | : | AMENDED COMPLAINT |
| NEW YORK POST CORPORATION, | : | (Jury Demand) |
| Defendant. | : | |

- - - - - - - - - - - - - - - - - - - - - - - - - -x

The plaintiff, acting pro se, as and for his complaint respectfully alleges:

1. Jurisdiction is based on:

(i) § 214 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-14;

(ii) §§ 1-2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-2; § 4 of the Clayton Act, 15 U.S.C. § 15; § 1337 of the Judicial Code, 28 U.S.C. § 1337;

(iii) § 22(a) of the Securities Act of 1933, 15 U.S.C. § 77v(a);

(iv) § 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa; Regulation § 240.10b-5;

(v) §§ 1985(2) and 1986 of the Civil Rights Act, 42 U.S.C. §§ 1985(2) and 1986; § 1343 of the Judicial Code, 28 U.S.C. § 1343; and

(vi) the principles of pendent jurisdiction.

2. Plaintiff, an attorney admitted to practice in New York, resides at 329 E. 63rd Street, New York, N.Y. 10021. Plaintiff is the attorney for Christian Thee, a resident of the Eastern District of New York, who

is suing (i) General Mills, Inc. and General Mills Fun Group, Inc. (formerly known as Parker Brothers, Inc.) in the Eastern District of New York in an action filed under Index No. 75 C 1554 and (ii) Marvin Glass & Associates in the Northern District of Illinois, Eastern Division, filed under Index No. 76 C 1785. Plaintiff is employed by Mr. Thee on a 35% contingent-fee basis, subject to interests of two other attorneys, as described in the offering circular, dated June 25, 1976 (a copy of which is annexed hereto as Exhibit A). The basis for Mr. Thee's two actions is described at pages 7-12 of Exhibit A.

3. Defendant, New York Post Corporation, upon information and belief, is a New York corporation. Defendant has its principal place of business at 210 South Street, New York, N.Y. 10002 and is qualified to and does business in the Eastern District of New York. Defendant is the publisher of the New York Post, one of the few major daily newspapers in New York City.

4. Plaintiff is a "political litigator" in the fields of antitrust and (business-oriented) civil rights litigation and is attempting to establish a law practice (others could call it a "clinic") which in substance would be a "private justice department" to assist clients with meritorious claims in the antitrust and (business-oriented) civil rights fields who are in need of legal assistance but cannot afford to pay the full amount of litigation expenses reasonably anticipated. Mr. Thee is one of such needy persons. The reason that a "private justice department" is needed is that federal and state agencies do not have a "duty" to enforce the laws as to specific violations alleged. Such governmental agencies operate instead on a highly discretionary basis, with limited personnel and financing, and are unable to assist most private persons in need of help in the antitrust and (business-oriented) civil rights areas of law.

5. In furtherance of his desire to assist Mr. Thee and in furtherance of his plans to have the facilities and financing comparable to the United States Justice Department for his present and future clients, plaintiff prepared and filed information with the Securities and Exchange Commission (the "SEC") under Regulation A under the Securities Act of 1933. The SEC's New York Regional Office reviewed the submitted material and declared that the Thee offering was effective for sale on June 25, 1976. See copy of offering circular annexed hereto as Exhibit A.

6. On June 22, 1976, on behalf of the Mr. Thee, plaintiff submitted a copy of the offering circular to defendant together with a form of tombstone advertisement (a copy of which is annexed as Exhibit B) to obtain a quote on the price of the advertisement and to run the advertisement if the price was acceptable.

7. On June 23, 1976, defendant rejected the copy and stated that the advertisement and securities offering were not "suitable" for defendant's readers and, therefore, not acceptable for publication in defendant's New York Post. This rejection occurred again, on June 25, 1976, when Byron S. Greenberg, the Treasurer, a Director and the Business Manager of defendant, said that the Advertising Acceptability Committee of defendant found the advertisement "not acceptable"; that he supposed it was a policy not to accept offerings of "contingent interests"; that the Offering Circular made reference to certain risk factors important to investors; that defendant has rejected other tombstone advertisements; that defendant does this rejecting of tombstone advertisements based on criteria; that there may be a number of aspects to such criteria; that defendant made a "judgment call" based on a review of plaintiff's submitted

copy, the background on it, and in the view of the Committee; and that for specific reasons the defendant believed that the advertisement was not acceptable. Earlier on the 25th day of June, 1976, Mr. Goldreyer of defendant's Advertising Department advised plaintiff that the offered tombstone advertisement was passed through to defendant's Advertising Acceptability Committee, which refused the advertisement; that the Committee gave no reason, except that the advertisement was "not acceptable"; that such rejection was typical of defendant's procedures; and that this has happened with great frequency with tombstone advertisements. At plaintiff's request, Mr. Greenberg said he would resubmit the tombstone advertisement to defendant's Advertising Acceptability Committee for reconsideration, together with plaintiff's stated intention to file this action against defendant.

8. Plaintiff submitted identical requests to run tombstone advertising to the New York Times, Wall Street Journal (Eastern Edition), New York Law Journal, Staten Island Advance and 7 leading financial magazines, or business magazines, among other publications, and was turned down by each of the named newspapers and two magazines on similar grounds. No major daily newspaper in New York City suitable for publication of the tombstone advertisement would take the offered advertisement. Without such tombstone advertising in such major daily newspapers, the Thee public offering of securities cannot be successfully carried out and the offered securities sold, on an economic or competitive basis. The newspapers and magazines which turned down the offered tombstone advertisement (placed by plaintiff on behalf of his client, Mr. Thee) together with any other newspapers and magazines which have a business practice of turning down some but not all tombstone advertisements for federal public offerings (other than for

credit reasons), together with the participating officers, directors, employees, agents and attorneys thereof, are hereby designated as co-conspirators of defendant (including the participating officers, directors, employees, agents and attorneys of defendant, including but not limited to the following:

(a) Dorothy Schiff, Editor-in-Chief and Publisher;

(b) Byron S. Greenberg, Treasurer, Director and Business Manager;

(c) Lawrence Goldreyer, of the Advertising Department;

(d) Richard Le Long, of the Advertising Department;

(e) Members of the Advertising Acceptability Committee;

(f) Members of defendant's Board of Directors; and

(g) Messrs. Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendant, according to Mr. Greenberg's secretary.

9. The defendant's basis for selection of the tombstone advertisements it does publish is made in substantial part on the merits of the proposed offering, upon information and belief. The defendant and co-conspirators screen proposed public offerings for the readership of the publication and only permit tombstone advertisements to run where the offering meets the investment suitability standards set by the newspaper or other publications, which favor almost exclusively the securities offerings by major corporations or by governmental agencies. The substantial national policy of permitting small businesses to raise capital in competition with major corporations and others is openly flouted by this discriminatory policy favoring major corporations, which entails an investment recommendation by the defendant's newspaper to readers (who purchase the paper) that the advertised offerings are suitable for them, in violation of the Investment Advisers Act of 1940 (as a sale of investment advice without registration or other compliance),

the Securities Act of 1933 (as an illegal prospectus not filed with or reviewed by the SEC) and the Securities Exchange Act of 1934 (as a manipulative and deceptive device and contrivance, and a device, scheme and artifice to defraud), and the Rules and Regulations thereunder. The offering of Mr. Thee was rejected in spite of the fact that investors can redeem their shares at or very close to the amount of their investment, and for such reason any market which developed for the shares would necessarily be higher than the offering price. The securities offerings permitted to be advertised in defendant's newspaper are substantially different. A substantial part of such securities could result in substantial losses of the amounts invested by the purchasers of such securities. The free-enterprise system is seriously threatened by the defendant and co-conspirators who make this "free-enterprise system" for the raising of capital available only to the major corporations, as a practical matter, resulting in monopolies and higher prices for consumers. Defendant has an editorial policy to support the issues offered by major corporations, for the purpose of helping to sell such issues to unwary public investors and to encourage major corporations (and governmental agencies) to advertise their offerings in defendant's newspaper. This editorial policy is carried over into a wilful slanting of news stories to give major corporations an unwarranted good image and an editorial policy (also carried over into a wilful slanting of news stories) to give companies which would compete with the major corporations a comparatively bad image. The public generally is unaware of this editorial policy of defendant, and how it affects defendant's publication of tombstone advertisements, and in fact, upon information and belief, the public generally believes that defendant is obligated to and does publish every advertisement (for a lawful product or service) offered to it (except where payment for the

advertisement is not in advance and the advertiser is a credit problem). This belief of the public, although erroneous, nevertheless is part of the scheme by which defendant is giving misleading and illegal investment advice to the public, through its publication of some but not all tombstone advertisements offered to it (where payment is not a problem). Also, defendant refuses non-tombstone advertising offered by persons who would compete with the major corporations which advertise (or may wish to advertise) in defendant's newspaper. This practice is commonly carried out by the co-conspirator newspapers.

10. Upon information and belief, defendant is aware that the co-conspirators have similar policies and defendant has combined and conspired with these co-conspirators, including all or virtually all of the other major daily newspapers in New York City, to prevent capital from being raised by persons such as plaintiff and his clients in competition with or against the best interests of the major corporations which regularly advertise (or may advertise) in their newspapers, or the major corporations which in fact own most of the major daily newspapers in New York City. The defendant and other co-conspirators also use their editorial policy to favor the interests of such major corporations and advertisers and to disfavor the interests of competitors of such corporations or persons who would try to enforce their rights against such corporations. This conspiracy is part of and in furtherance of the conspiracy alleged in plaintiff's action against The Association of the Bar of the City of New York; Supreme Court, Appellate Division, First Department; Supreme Court, Appellate Division, Second Department; and Attorney General of New York State, commenced on September 8, 1975 in the Eastern District of New York under Index No. 75 C 1473

(JFD), in which plaintiff alleged the following conspiracy and co-conspirators:

"(a) American Bar Association (founded in 1878);

(b) The New York State Bar Association (founded in 1876);

(c) Appellate Divisions of the Supreme Court of New York State for the First, Second, Third and Fourth Departments;

(d) Court of Appeals of New York State;

(e) Other bar associations and courts in New York State or throughout the United States which have adopted or are enforcing laws or rules which prohibit clients pursuing antitrust claims and/or their attorneys working on a contingent-fee basis from obtaining the money to pay the litigation expenses by selling a percentage of their respective interests in the antitrust claims to private or public investors and from employing expert witnesses to testify at the trial on a contingent-fee basis;

(f) Attorneys in the Eastern or Southern Districts of New York, elsewhere in New York State or elsewhere in the United States, including members of bar associations, who have participated in the adoption or enforcement of laws or rules which prohibit the activities described in subparagraph (e) above; and

(g) Clients of any of the attorneys described in the preceding subparagraph (f) who give encouragement to the attorneys in their efforts to prevent the activities described in subparagraph (e) above for the purpose of making it more difficult if not impossible for small businesses to enforce any of their antitrust claims against any of these clients." ¶ 9 of Amended Complaint in Person Action.

"44. Plaintiff alleges that beginning in 1908 and continuing up to and including the date of this complaint, defendant The Association of the Bar of the City of New York and the Co-Conspirators have and now are engaged in a continuing unlawful combination or conspiracy unreasonably to restrain or monopolize trade and commerce (i) in the rendering and financing of legal and paralegal services for persons with antitrust claims or litigation arising under the nation's antitrust laws; and (ii) in other industries involving high concentrations of economic power through the scheme of making legal and paralegal services unavailable to smaller businesses and new entrants in the industries, in violation of § 1 of the Sherman Antitrust Act (15 U.S.C. § 1)." ¶ 44 of the Amended Complaint in Person Action.

11. Defendant, a person who is described in § 1985(2) of the Civil Rights Act, 42 U.S.C. § 1985(2), has knowledge of the wrongs done and to be done against plaintiff and his client, Mr. Thee, which wrongs are also to be committed, and defendant has the power to prevent or aid in preventing the commission of such wrongs, but has neglected and refused to do so, and continues to neglect and refuse to do so. Defendant could have prevented damages to plaintiff and his client, Mr. Thee, by reasonable diligence.

12. Defendant, through its publication of, advertising solicitation and receipt for, and distribution of the New York Post, is engaged in a substantial dollar amount of interstate commerce, and the activities of defendant and co-conspirators directed against plaintiff and his client, Mr. Thee, are an integral part of the interstate activities of defendant, and constitute an unreasonable restraint of trade, and are a per se violation of the Sherman Antitrust Act.

13. The relevant geographic market under § 2 of the Sherman Antitrust Act is New York City; and the relevant product or service market is major daily and Sunday newspapers having at least 50% of their circulation in New York City which are suitable for publication of tombstone advertising (based on where tombstone advertising is usually published).

14. Defendant is acting with malice toward plaintiff and his client, Mr. Thee, in a repetitive business practice to reject some, but not all, tombstone and other advertising of persons who would compete with or otherwise adversely affect the interests of the actual or prospective major corporate

advertisers in the newspapers published by defendant and the other co-conspirators or the interests of the owners of the newspapers.

15. Plaintiff has been injured by the activities of defendant alone, and by the activities of the defendant and co-conspirators, to the extent of $1,000,000 or such additional amount as will be proved by plaintiff at trial.

16. Defendant's actions are preventing plaintiff and his clients from enforcing their various rights under the 1st Amendment to the United States Constitution, including the right of political association, the right to petition the courts and other governmental agencies for a redress of grievances, and the right to freedom of speech, including the right to publish valuable commercial information which the public should have, in violation of §§ 1985(2) and 1986 of the Civil Rights Act, 42 U.S.C. §§ 1985(2) and 1986.

17. Plaintiff is entitled to punitive damages in the amount of $1,000,000 or more, which will be proved by plaintiff at trial.

PRAYER

1. Plaintiff requests that this court adjudge and decree that the activities of defendant and co-conspirators are in violation of each of the statutes named in ¶ 1 of this complaint and in violation of various New York laws and/or rules.

2. Plaintiff requests that this court grant a permanent injunction prohibiting the defendant and co-conspirators, and all officers, directors, employees, agents and attorneys thereof, from accepting or publishing any tombstone advertising for any SEC registered or Regulation A public offerings unless defendant and all co-conspirators accept all such tombstone advertising offered to them (except where the advertiser refuses to pay in advance and is a bona fide credit problem).

3. Plaintiff requests that this court enter a judgment in favor of plaintiff in the amount of $1,000,000 or more as compensatory damages and $1,000,000 or more in punitive damages against the defendant.

4. Plaintiff requests such other and further relief as this court may deem just, equitable and proper.

Jury Demand

PLEASE TAKE NOTICE that plaintiff DEMANDS A TRIAL BY JURY, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable by right by a jury.

Dated: New York, New York
July 4, 1976

Carl E. Person, pro se
132 Nassau Street
New York, N.Y. 10038

(212) 349-4616

Please Note:

Exhibits A and B are printed at A-7 through A-31 and A-32, respectively, as exhibits to the original complaint.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARL E. PERSON, : 76 C 1217 (ERN)

Plaintiff, :

-against- : ORDER GRANTING LEAVE TO SERVE AMENDED COMPLAINT

NEW YORK POST CORPORATION, :

Defendant. :

----------x

IT IS HEREBY ORDERED that, upon the application of the plaintiff and with the oral consent of the defendant's attorneys, the plaintiff is hereby granted leave to file an amended complaint adding Christian Thee as a plaintiff.

Dated: Brooklyn, New York
July 19, 1976

Edward R. Neaher
U. S. D. J.

BEST COPY AVAILABLE

2ND AMENDED COMPLAINT WITHOUT EXHIBITS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | |
| Plaintiffs, | : | 76 C 1217 (ERN) |
| -against- | : | 2ND AMENDED COMPLAINT |
| NEW YORK POST CORPORATION, | : | (Jury Demand) |
| Defendant. | : | |

- - - - - - - - - - - - - - - - - - - - - - - - - -x

The plaintiffs, acting pro se, as and for their complaint respectfully allege:

1. Jurisdiction is based on:

(i) § 214 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-14;

(ii) §§ 1-2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1-2; § 4 of the Clayton Act, 15 U.S.C. § 15; § 1337 of the Judicial Code, 28 U.S.C. § 1337;

(iii) § 22(a) of the Securities Act of 1933, 15 U.S.C. § 77v(a);

(iv) § 27 of the Securities Exchange Act of 1934, 15 U.S.C. § 78aa; Regulation § 240.10b-5;

(v) §§ 1985(2) and 1986 of the Civil Rights Act, 42 U.S.C. §§ 1985(2) and 1986; § 1343 of the Judicial Code, 28 U.S.C. § 1343; and

(vi) the principles of pendent jurisdiction.

2A. Plaintiff CHRISTIAN THEE resides at 76 State Street, Brooklyn, N.Y. 11201, in the Eastern District of New York. Christian Thee is suing

(i) General Mills, Inc. and General Mills Fun Group, Inc. (formerly known as Parker Brothers, Inc.) in the Eastern District of New York in an action filed under Index No. 75 C 1554 and (ii) Marvin Glass & Associates in the Northern District of Illinois, Eastern Division, filed under Index No. 76 C 1785.

2B. Plaintiff CARL E. PERSON, an attorney admitted to practice in New York, resides at 329 E. 63rd Street, New York, N.Y. 10021. Person is the attorney for Thee, and is employed by Thee on a 35% contingent-fee basis, subject to interests of two other attorneys, as described in the offering circular, dated June 25, 1976 (a copy of which is annexed hereto as Exhibit A). The basis for Thee's two actions is described at pages 7-12 of Exhibit A.

3. Defendant, New York Post Corporation, upon information and belief, is a New York corporation. Defendant has its principal place of business at 210 South Street, New York, N.Y. 10002 and is qualified to and does business in the Eastern District of New York. Defendant is the publisher of the New York Post, one of the few major daily newspapers in New York City.

4. Person is a "political litigator" in the fields of antitrust and (business-oriented) civil rights litigation and is attempting to establish a law practice (others could call it a "clinic") which in substance would be a "private justice department" to assist clients with meritorious claims in the antitrust and (business-oriented) civil rights fields who are in need of legal assistance but cannot afford to pay the full amount of litigation expenses reasonably anticipated. Mr. Thee is one of such needy persons. The reason that a "private justice department" is needed is that federal and

state agencies do not have a "duty" to enforce the laws as to specific violations alleged. Such governmental agencies operate instead on a highly discretionary basis, with limited personnel and financing, and are unable to assist most private persons in need of help in the antitrust and (business-oriented) civil rights areas of law.

5. In furtherance of his desire to assist Thee and in furtherance of his plans to have the facilities and financing comparable to the United States Justice Department for his present and future clients, Person prepared and filed information with the Securities and Exchange Commission (the "SEC") under Regulation A under the Securities Act of 1933. The SEC's New York Regional Office reviewed the submitted material and declared that the Thee offering was effective for sale on June 25, 1976. See copy of offering circular annexed hereto as Exhibit A.

6. On June 22, 1976, on behalf of Thee, Person submitted a copy of the offering circular to defendant together with a form of tombstone advertisement (a copy of which is annexed as Exhibit B) to obtain a quote on the price of the advertisement and to run the advertisement if the price was acceptable.

7. On June 23, 1976, defendant rejected the copy and stated that the advertisement and securities offering were not "suitable" for defendant's readers and, therefore, not acceptable for publication in defendant's New York Post. This rejection occurred again, on June 25, 1976, when Byron S. Greenberg, the Treasurer, a Director and the Business Manager of defendant, said that the Advertising Acceptability Committee of defendant found the advertisement "not acceptable"; that he supposed it was a policy not to accept offerings of "contingent interests"; that the Offering Circular made reference to certain

risk factors important to investors; that defendant has rejected other tombstone advertisements; that defendant does this rejecting of tombstone advertisements based on criteria; that there may be a number of aspects to such criteria; that defendant made a "judgment call" based on a review of plaintiffs' submitted copy, the background on it, and in the view of the Committee; and that for specific reasons the defendant believed that the advertisement was not acceptable. Earlier on the 25th day of June, 1976, Mr. Goldreyer of defendant's Advertising Department advised Person that the offered tombstone advertisement was passed through to defendant's Advertising Acceptability Committee, which refused the advertisement; that the Committee gave no reason, except that the advertisement was "not acceptable"; that such rejection was typical of defendant's procedures; and that this has happened with great frequency with tombstone advertisements. At Person's request, Mr. Greenberg said he would resubmit the tombstone advertisement to defendant's Advertising Acceptability Committee for reconsideration, together with Person's stated intention to file this action against defendant.

8. Plaintiffs submitted identical requests to run tombstone advertising to the New York Times, Wall Street Journal (Eastern Edition), New York Law Journal, Staten Island Advance and 7 leading financial magazines, or business magazines, among other publications, and were turned down by each of the named newspapers and two magazines on similar grounds. No major daily newspaper in New York City suitable for publication of the tombstone advertisement would take the offered advertisement. Without such tombstone advertising in such major daily newspapers, the Thee public offering of securities cannot be successfully carried out and the offered securities sold, on an economic or competitive basis. The newspapers and magazines which turned down the offered tombstone advertisement (placed by plaintiffs)

together with any other newspapers and magazines which have a business practice of turning down some but not all tombstone advertisements for federal public offerings (other than for credit reasons), together with the participating officers, directors, employees, agents and attorneys thereof, are hereby designated as co-conspirators of defendant (including the participating officers, directors, employees, agents and attorneys of defendant), including but not limited to the following:

(a) Dorothy Schiff, Editor-in-Chief and Publisher;

(b) Byron S. Greenberg, Treasurer, Director and Business Manager;

(c) Lawrence Goldreyer, of the Advertising Department;

(d) Richard Le Long, of the Advertising Department;

(e) Members of the Advertising Acceptability Committee;

(f) Members of defendant's Board of Directors; and

(g) Messrs. Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendant, according to Mr. Greenberg's secretary.

9. The defendant's basis for selection of the tombstone advertisements it does publish is made in substantial part on the merits of the proposed offering, upon information and belief. The defendant and co-conspirators screen proposed public offerings for the readership of the publication and only permit tombstone advertisements to run where the offering meets the investment suitability standards set by the newspaper or other publications, which favor almost exclusively the securities offerings by major corporations or by governmental agencies. The substantial national policy of permitting small businesses to raise capital in competition with major corporations and others is openly flouted by this discriminatory policy favoring major corporations, which entails an investment recommendation by the defendant's newspaper to readers (who purchase the paper) that the advertised offerings

are suitable for them, in violation of the Investment Advisers Act of 1940 (as a sale of investment advice without registration or other compliance), the Securities Act of 1933 (as an illegal prospectus not filed with or reviewed by the SEC) and the Securities Exchange Act of 1934 (as a manipulative and deceptive device and contrivance, and a device, scheme and artifice to defraud), and the Rules and Regulations thereunder. The offering of Thee was rejected in spite of the fact that investors can redeem their shares at or very close to the amount of their investment, and for such reason any market which developed for the shares would necessarily be higher than the offering price. The securities offerings permitted to be advertised in defendant's newspaper are substantially different. A substantial part of such securities could result in substantial losses of the amounts invested by the purchasers of such securities. The free-enterprise system is seriously threatened by the defendant and co-conspirators who make this "free-enterprise system" for the raising of capital available only to the major corporations, as a practical matter, resulting in monopolies and higher prices for consumers. Defendant has an editorial policy to support the issues offered by major corporations, for the purpose of helping to sell such issues to unwary public investors and to encourage major corporations (and governmental agencies) to advertise their offerings in defendant's newspaper. This editorial policy is carried over into a wilful slanting of news stories to give major corporations an unwarranted good image and an editorial policy (also carried over into a wilful slanting of news stories) to give companies which would compete with the major corporations a comparatively bad image. The public generally is unaware of this editorial policy of defendant, and how it affects defendant's publication of tombstone advertisements, and in fact, upon information and belief, the public generally believes that defendant is obligated to and does publish every advertisement (for a lawful product or

service) offered to it (except where payment for the advertisement is not in advance and the advertiser is a credit problem). This belief of the public, although erroneous, nevertheless is part of the scheme by which defendant is giving misleading and illegal investment advice to the public, through its publication of some but not all tombstone advertisements offered to it (where payment is not a problem). Also, defendant refuses non-tombstone advertising offered by persons who would compete with the major corporations which advertise (or may wish to advertise) in defendant's newspaper. This practice is commonly carried out by the co-conspirator newspapers.

10. Upon information and belief, defendant is aware that the co-conspirators have similar policies and defendant has combined and conspired with these co-conspirators, including all or virtually all of the other major daily newspapers in New York City, to prevent capital from being raised by persons such as plaintiffs and Person's other clients in competition with or against the best interests of the major corporations which regularly advertise (or may advertise) in their newspapers, or the major corporations which in fact own most of the major daily newspapers in New York City. The defendant and other co-conspirators also use their editorial policy to favor the interests of such major corporations and advertisers and to disfavor the interests of competitors of such corporations or persons who would try to enforce their rights against such corporations. This conspiracy is part of and in furtherance of the conspiracy alleged in Person's action against The Association of the Bar of the City of New York; Supreme Court, Appellate Division, First Department; Supreme Court, Appellate Division, Second Department; and Attorney General of New York State, commenced on September 8, 1975 in the Eastern District of New York under Index No.

75 C 1473 (JFD), in which Person alleged the following conspiracy and co-conspirators:

"(a) American Bar Association (founded in 1878);

(b) The New York State Bar Association (founded in 1876);

(c) Appellate Divisions of the Supreme Court of New York State for the First, Second, Third and Fourth Departments;

(d) Court of Appeals of New York State;

(e) Other bar associations and courts in New York State or throughout the United States which have adopted or are enforcing laws or rules which prohibit clients pursuing antitrust claims and/or their attorneys working on a contingent-fee basis from obtaining the money to pay the litigation expenses by selling a percentage of their respective interests in the antitrust claims to private or public investors and from employing expert witnesses to testify at the trial on a contingent-fee basis;

(f) Attorneys in the Eastern or Southern Districts of New York, elsewhere in New York State or elsewhere in the United States, including members of bar associations, who have participated in the adoption or enforcement of laws or rules which prohibit the activities described in subparagraph (e) above; and

(g) Clients of any of the attorneys described in the preceding subparagraph (f) who give encouragement to the attorneys in their efforts to prevent the activities described in subparagraph (e) above for the purpose of making it more difficult if not impossible for small businesses to enforce any of their antitrust claims against any of these clients." ¶ 9 of Amended Complaint in Person Action.

"44. Plaintiff alleges that beginning in 1908 and continuing up to and including the date of this complaint, defendant The Association of the Bar of the City of New York and the Co-Conspirators have and now are engaged in a continuing unlawful combination or conspiracy unreasonably to restrain or monopolize trade and commerce (i) in the rendering and financing of legal and paralegal services for persons with antitrust claims or litigation arising under the nation's antitrust laws; and (ii) in other industries involving high concentrations of economic power through the scheme of making legal and paralegal services unavailable to smaller businesses and new entrants in the industries, in violation of § 1 of the Sherman Antitrust Act (15 U.S.C. § 1)." ¶ 44 of the Amended Complaint in Person Action.

11. Defendant, a person who is described in § 1985(2) of the Civil Rights Act, 42 U.S.C. § 1985(2), has knowledge of the wrongs done and to be done against plaintiffs, which wrongs are also to be committed, and defendant has the power to prevent or aid in preventing the commission of such wrongs, but has neglected and refused to do so, and continues to neglect and refuse to do so. Defendant could have prevented damages to the plaintiffs by reasonable diligence.

12. Defendant, through its publication of, advertising solicitation and receipt for, and distribution of the New York Post, is engaged in a substantial dollar amount of interstate commerce, and the activities of defendant and co-conspirators directed against plaintiffs are an integral part of the interstate activities of defendant, and constitute an unreasonable restraint of trade, and are a per se violation of the Sherman Antitrust Act.

13. The relevant geographic market under § 2 of the Sherman Antitrust Act is New York City; and the relevant product or service market is major daily and Sunday newspapers having at least 50% of their circulation in New York City which are suitable for publication of tombstone advertising (based on where tombstone advertising is usually published).

14. Defendant is acting with malice toward plaintiffs in a repetitive business practice to reject some, but not all, tombstone and other advertising of persons who would compete with or otherwise adversely affect the interests of the actual or prospective major corporate advertisers in the newspapers published by defendant and the other co-conspirators or the interests of the owners of the newspapers.

15. Plaintiffs have been injured by the activities of defendant alone, and by the activities of the defendant and co-conspirators, to the extent of $1,000,000 or such additional amount as will be proved by plaintiffs at trial.

16. Defendant's actions are preventing plaintiffs and the other clients of Person from enforcing their various rights under the 1st Amendment to the United States Constitution, including the right of political association, the right to petition the courts and other governmental agencies for a redress of grievances, and the right to freedom of speech, including the right to publish valuable commercial information which the public should have, in violation of §§ 1985(2) and 1986 of the Civil Rights Act, 42 U.S.C. §§ 1985(2) and 1986.

17. Plaintiffs are entitled to punitive damages in the amount of $1,000,000 or more each, which will be proved by plaintiffs at trial.

PRAYER

1. Plaintiffs request that this court adjudge and decree that the activities of defendant and co-conspirators are in violation of each of the statutes named in ¶ 1 of this complaint and in violation of various New York laws and/or rules.

2. Plaintiffs request that this Court grant a permanent injunction prohibiting the defendant and co-conspirators, and all officers, directors, employees, agents and attorneys thereof, from accepting or publishing any tombstone advertising for any SEC registered or Regulation A public

offerings unless defendant and all co-conspirators accept all such tombstone advertising offered to them (except where the advertiser refuses to pay in advance and is a bona fide credit problem).

3. Plaintiffs request that this Court enter a judgment in favor of plaintiffs in the amount of $1,000,000 or more each as compensatory damages and $1,000,000 or more each in punitive damages against the defendant.

4. Plaintiffs request such other and further relief as this Court may deem just, equitable and proper.

Jury Demand

PLEASE TAKE NOTICE that plaintiffs DEMAND A TRIAL BY JURY, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable by right by a jury.

Dated: New York, New York
July 21, 1976

Carl E. Person, pro se
132 Nassau Street
New York, N.Y. 10038

(212) 349-4616

Christian Thee, pro se
76 State Street
Brooklyn, N.Y. 11201

(212) 834-1513

Please Note:

Exhibits A and B are printed at A-7 through A-31 and A-32, respectively, as exhibits to the original complaint.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNSEALED

- - - - - - - - - - - - - - - - - - - - - - -x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- : 76 C 1217 (ERN)

NEW YORK POST CORPORATION, : ORDER

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - -x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
AUG 2 1976
TIME A.M. P.M.

IT IS HEREBY ORDERED:

1. The defendant New York Post Corporation's (the "Post") time to move, answer or otherwise respond to the second amended complaint is extended to and including August 17, 1976.

2. The Post's time to serve answering papers or otherwise respond to plaintiff Carl E. Person's motion for a preliminary injunction, which is dated July 2, 1976, is hereby extended to and including August 17, 1976. Person shall rely upon the papers as served on July 2, 1976 as his motion papers.

3. On or before August 31, 1976, Person shall serve on the Post all answering papers to any motion made by the Post on or before August 17, 1976, and all reply papers in support of his motion for a preliminary injunction.

4. On or before August 31, 1976 plaintiff Christian Thee shall serve all answering papers to any motion made by the Post on or before August 17, 1976.

5. The return date for Person's motion for a preliminary injunction and any motion made by the Post on

or before August 17, 1976 is September 7, 1976 at 2:00 p.m. before the Honorable Edward R. Neaher, United States Courthouse, 225 Cadmen Plaza, Brooklyn, New York.

SO ORDERED:

Edward R. Neaher

Edward R. Neaher
USDJ

NOTICE OF JOINDER OF MOTION (BY CHRISTIAN THEE)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - - -x

| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | 76 C 1217 (ERN) |
| Plaintiffs, | : | NOTICE OF JOINDER OF MOTION |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

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PLEASE TAKE NOTICE that upon all the pleadings and prior proceedings had herein, plaintiff CHRISTIAN THEE hereby joins in the original plaintiff's motion for a preliminary injunction, for the reasons set forth in plaintiff Carl E. Person's moving papers, and accepts the briefing schedule, upon which the parties agreed, established during the conference with Hon. Edward R. Neaher on July 20, 1976.

Dated: Brooklyn, New York
July 26, 1976

Christian Thee

Christian Thee, Pro Se
76 State Street
Brooklyn, N.Y. 11201
(212) 834-1513

TO: MESSRS. PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendant
245 Park Avenue
New York, N.Y. 10022
Attn: William Pollard, Esq.
(212) 644-8175

CARL E. PERSON, Pro Se
132 Nassau Street
New York, N.Y. 10038
(212) 349-4616

NOTICE OF APPEARANCE BY PLAINTIFF THEE'S ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, : 76 C 1217 (ERN)

-against- : NOTICE OF APPEARANCE

NEW YORK POST CORPORATION, :

Defendants :

- - - - - - - - - - - - - - - - - - - - - - - - - - - - -x

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK:

PLEASE TAKE NOTICE that plaintiff Christian Thee is now represented in the above-entitled action by Richard Prentiss, Jr. who requests that all notices and papers in this action be served upon him at his offices stated below.

Dated: New York, New York
August 13, 1976

Richard Prentiss Jr.

Attorney for Plaintiff,
Christian Thee
35 East 72nd Street
New York, New York

(212) 628-2400

TO: PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendant
345 Park Avenue
New York, New York 10022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - -x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- :

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - -x

76 Civ. 1217 (ERN)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the annexed affidavits of Morris B. Abram, Byron S. Greenberg, Arthur Brody and Richard LeLong, sworn to August 17, 1976, Lawrence Goldreyer, sworn to August 13, 1976, and upon all other papers and proceedings heretofore had herein, defendant New York Post Corporation will move this Court before Honorable Edward R. Neaher at the United States Court House, 225 Cadman Plaza East, Brooklyn, New York, on September 7, 1976 at 2:00 p.m., or as soon after as counsel can be heard, for an order, pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure, dismissing the securities, civil rights and anti-trust claims on the grounds that plaintiffs do not have standing to sue, pursuant to Rule 12(b)(6), dismissing the securities, civil rights and monopolization claims on the grounds that plaintiffs have not stated a claim upon which relief can be granted, pursuant to Rule 9(b), dismissing the securities claims on the grounds that fraud has not been pleaded with particularity, pursuant to Rule 56, granting the defendant summary judgment on the restraint of trade claims, taxing plaintiffs the cost of this litigation including the Post's attorney's fees and

for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 17, 1976

Yours, etc.

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON

By _____

Attorneys for the Defendant
345 Park Avenue
New York, New York 10022
(212) 644-8000

TO: Carl E. Person, Esq. pro se
132 Nassau Street
New York, New York 10038

Richard J. Prentiss, Jr.
Attorney for Christian Thee
35 East 72nd Street
New York, New York 10021

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - -x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, : 76 Civ. 1217 (ERN)

-against- : AFFIDAVIT

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

MORRIS B. ABRAM, first being duly sworn, deposes and says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for defendant New York Post Corporation (the "Post"). I make this affidavit in support of the Post's motion to dismiss the complaint on the grounds that plaintiffs do not have standing to sue, have not stated claims upon which relief can be granted and have not pleaded fraud with particularity and for summary judgment on the anti-trust claims asserted by plaintiff Carl E. Person, ("Person") and plaintiff Christian Thee ("Thee").

2. Person and Thee are on a "search and destroy mission." They are searching for a cause of action they can assert against the Post for declining to publish Thee's tombstone advertisement. They seek to have this Court destroy the First Amendment's guarantee of a free press by directing the Post to print every tombstone submitted or to print none.

3. The 2nd Amended Complaint fails in this mission.

a. Neither Person nor Thee have the standing to sue the Post for an alleged securities fraud perpetrated against the general public or for alleged interference with their First Amendment rights under the Ku Klux Klan Act;

b. Person has no standing to sue for an alleged group boycott of Thee;

c. Plaintiffs have failed to state claims under the Investment Advisors Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, Ku Klux Klan Act, or Section 2 of the Sherman Act upon which relief can be granted;

d. Plaintiffs have failed to plead fraud with the particularity required by Rule 9(b), Fed. R. Civ. P.; and

e. Plaintiffs' claims are so frivolous, so meritless that we seek our attorneys' fees for this action pursuant to 15 U.S.C. 77(k)(e).

4. Since plaintiffs were able to plead the elements -- but not the supporting facts -- of a group boycott of Thee, the Post properly moves pursuant to Rule 56 for summary judgment on the § 1 Sherman Act claim.

The Post Is Entitled To
Summary Judgment On The
Group Boycott Claim

5. Plaintiffs' anti-trust claims are a sham.

6. There is not one iota of fact in the record which even cast a doubt upon the sworn testimony of the two Post employees who made the decision not to accept the Thee

tombstone or their superiors that the Post's actions were independent and the exercise of its own independent business judgment.

7. If the plaintiffs can point to any disputed facts in their answering affidavits, the Post will be happy to respond and dispose of them. But there are no disputed facts and there will be none.

8. An anti-trust lawsuit must consist of more than air, it must have some fuel upon which to feed and burn. There is no fuel here. The Court by granting summary judgment at this time will not be extinguishing a flame for there is none.

9. The compliant alleges that the Post will not print a tombstone advertisement announcing a public securities offering by anyone who would compete in the capital market with any major corporation or governmental agency, that this policy was made in concert with a number of publications in the metropolitan area, that it is being carried out in concert, that the Post declined to publish the Thee tombstone pursuant to this policy and that this conduct violates Section 1 of the Sherman Act, 15 U.S.C. 1. 2nd Amended Complaint ¶¶ 8-10 ("Complaint ¶____").

10. In support of these contentions, the complaint makes only one factual allegation allegedly upon the personal knowledge of the plaintiffs:

> Plaintiffs submitted identical request to run [Thee's] tombstone advertising to the New York Times, Wall Street Journal (Eastern Edition), New York Law Journal, Staten Island Advance and 7 leading financial magazines or business magazines,

> among other publications, and were turned down by each of the named newspapers and two magazines on similar grounds.

Complaint ¶8.

11. The remainder of the complaint -- such as the alleged "selective publication policy" and the alleged conspiracy -- is nothing more than free wheeling speculation based solely "upon information and belief."*

12. The Person affidavit sworn to July 2, 1976 ("Person Aff. ¶____") does not even carry the caveat "upon information and belief." It simply makes one conclusory or argumentative statement after another. It states no facts which support plaintiffs' allegations.

13. While the complaint ¶8 and the Person Affidavit ¶8 assert the Post has conspired with six publications, who plaintiffs have not sued, and any one else who may decline to publish the Thee tombstone at some unknown future date, there is not one reference in either paper to:

a) a single meeting;

b) a single telephone call;

c) a single document;

d) a single communication; or

e) a single shread of evidence

which even faintly suggest that any employee of the Post has ever discussed tombstone advertisements with anyone in the world, let alone joined a conspiracy to create and implement this alleged "selective publication policy."

---

*Included in this speculation is the baseless charge that the Post "touts" and disparages securities in its news columns. See Greenberg Aff. ¶3.

14. There is a simple reason for this slight omission of Messrs. Person and Thee. There is no such evidence and there is no such conspiracy.

15. Lawrence Goldreyer, the Post's Financial Advertising Director, and Richard LeLong, a Post advertising salesman, alone -- without discussing the matter with anyone and in the exercise of their independent business judgment -- decided that the Post would decline to publish the Thee tombstone advertisements. Affidavit of Lawrence Goldreyer, ¶¶3-4, sworn to August 13, 1976 ("Goldreyer Aff. ¶_____"); Affidavit of Richard LeLong, ¶¶4-5, sworn to August 17, 1976 ("LeLong Aff. ¶____"). Affidavits of Byron S. Greenberg, ¶ 7 sworn to August 17, 1976, ("Greenberg Aff. ¶____") and Arthur Brody ¶3, sworn to August 17, 1976 ("Brody Aff. ¶____").

16. Neither the Post's General Manager, Byron S. Greenberg, Advertising Director, Arthur Brody, Goldreyer nor LeLong have ever

a. been told to accept or reject for publication tomstone advertisements on the basis of the identity of the security's issuer or seller;

b. told anyone to accept or reject tombstones on that basis;

c. accepted or rejected a tombstone on that basis;

d. discussed such a policy with anyone; or

e. been told of such discussions.

Greenberg Aff. ¶¶8-12, Brody Aff. ¶¶5-10; Goldreyer Aff. ¶¶5-10; LeLong Aff. ¶¶8-13.

17. Eleven tombstone advertisements were submitted for publication in the Post this year. Ten were printed. Brody Aff. ¶ 6. Employees with 30 and 40 years tenure cannot recall a single instance -- other than the Thee tombstone -- where the Post declined to print a submitted tombstone. Greenberg Aff. ¶ 8; Brody Aff. ¶ 6; Goldreyer Aff. ¶ 8.

18. It is a well known fact that the Daily News has the largest circulation in the city and it enjoys the greatest readership of any newspaper among the working and middle classes. It is similarly well known that many of the people who make up the News' readership have retained lawyers on a contingent fee arrangement or known of others who have done so. Thus, the News' readers would probably best understand the dynamics of the Thee offering and, perhaps, be disposed toward subscribing to it.

19. Plaintiffs allege a lock-step conspiracy among the area's print media to protect the capital market for the security offerings of their major advertisers by denying individuals like Thee the means to advertise their offerings. For such a conspiracy to be viable, it would be imperative that the Daily News be a member.

20. On July 23, 1976 the Daily News at p. 6 published the Thee tombstone advertisement. See Exh. A. This is a strong evidence that there is no such conspiracy as plaintiffs allege.

21. There is still another anomaly in this litigation.

22. Plaintiffs allege that the Post has conspired with The New York Times, The Wall Street Journal, The New York Law Journal and numerous other publications. Between June 20 and 25, 1976, the week Thee submitted his tombstone to the Post. The Times and The Wall Street Journal published 55 tombstone advertisements -- five and one-half times the number the Post has published all year. Yet neither The Times, The Journal nor any other publication has been sued.

23. Were this a lawsuit brought in good faith, The Post would not be the sole defendant.

24. As our memorandum of law demonstrates, plaintiffs sue on one defective theory after another. The antitrust claims are no more legitimate.

The Unilateral Action of
The Post Did Not Violate
The Sherman Act

25. "A person still has the right to refuse to do business with another, provided he acts independently. . . ." Modern Home Institute, Inc. v. Hartford Acc. & Ind. Co., 513 F.2d 102, 103 (2d Cir., 1975). This is settled law.

26. In a desperate attempt to overcome this principle, plaintiffs make a feeble attempt to plead a group boycott of Thee, a per se violation of the Sherman Act, Section 1.

27. The alleged parallel behavior -- not even conscious parallel behavior -- of the Post and a number of newspapers who were not sued is plaintiffs' sole factual contention to support their conspiracy allegation. This allegation,

even if supported by affidavit and accepted as true, is legally insufficient to defeat our motion for summary judgment.

28. The Second Circuit has held in affirming the granting of summary judgment in a group boycott case that:

> "parallel behavior alone is not sufficient evidence of conspiracy to find a Sherman Act § 1 violation. Theatre Enterprises Inc. v. Paramount Film Distributing Corp., 346 U.S. 537, 541, 74 S.Ct. 257, 98 L. Ed. 273 (1954); Kreager v. General Electric Co., 497 F.2d 468 (2d Cir. 1972), cert. denied, 419 U.S. 861, 95 S.Ct. 111, 42 L. Ed 2d 95 (1975); Deleware Valley Marine Supply Co. v. American Tobacco Co., 297 F.2d 199 (3d Cir. 1961), cert. denied, 369 U.S. 839, 82 S.Ct. 867, 7 L. Ed. 2d 843 (1962). The mere fact that all defendant companies were initially enthustiastic about plaintiffs' proposal and then rejected it, even if they knew the other defendant companies were doing likewise, is not enough to defeat the motion for summary judgment. E.G., Dahl, Inc. v. Roy Cooper Co., 448 F.2d 17 (9th Cir. 1971). Such parallel conduct is consistent with independent competitive decision or at most reflects a non-consensual decision not to compete. Additional facts or circumstances are needed to show that the decisions were interdependent and thus raise the inference of a tacit agreement to boycott. Interdependent Iron Works, Inc. v. United States Steel Corp., 322 F.2d 656 (9th Cir.) cert. denied, 375 U.S. 922, 84 S.Ct. 267, 11 L. Ed. 2d 165 (1963); Turner, The Definition of Agreement Under the Sherman Act: Conscious Parallelism and Refusals to Deal, 75 Harv. L. Rev. 655, 658-59, 681 (1962) (Emphasis added).

Modern Home, supra, 513 F.2d at 111-112.

29. Plaintiffs also make the conclusory allegation, complaint ¶ 8, that the Post as a corporate entity conspired with its "officers, directors, employees, agents and attorneys." Plaintiffs again take issue with a settled principle of law.

> "[T]he general rule is that a conspiracy cannot be based upon an agreement between a coproration and its officers, agents or employees."

Morton Bldgs. of Neb. Inc. v. Morton Bldgs. Inc., 531 F.2d 910, 917 (8th Cir., 1976).

30. Without alleged disputed facts that purport to show that the alleged conduct of the alleged co-conspirators was interdependent and, thus, lend some support to plaintiffs' "information and belief" conclusory assertions, the anti-turst claims must fall. Modern Home, supra; Stern & Stern v. Criterion Jewelry Casting Co., Current CCH Trade Cases ¶60,770 (SDNY, 1976).

Summary Judgment Sould be Granted

31. We are aware of the Supreme Court's admonition that summary judgment should rarely be granted in anti-trust suits. Compare: Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464 (1962) with First National Bank v. Cities Services Co., 391 U.S. 253 (1968). However this suit is one of the limited number where summary judgment should be granted now.

> "A court ought not engage in needless and time-consuming efforts to prune down a lawsuit which is doomed from the outset to eventual dismissal."

Ryals v. National Car Rental System, Inc., 404 F. Supp. 481, 484 (D. Minn., 1975).

32. Similarly, a court should not subject a defendant to the expense and inconvenience of litigation where, as here, the sole factual allegation of parallel behavior is legally insufficient to support plaintiffs' anti-trust claims.

33. The fact that plaintiffs have not had access to discovery does not defeat the ripeness of our request for summary judgment. In Stern & Stern, supra, the court granted the defendant's motion for summary judgment on a group boycott claim prior to any discovery by the plaintiff when "[t]he plaintiff ... failed to provide any facts upon which the complaint rests." Id at ¶ 60,700 p. 68,332.

34. Similarly, in GAF Corp. v. Circle Floor Co., 329 F.Supp. 823 (SDNY, 1971) aff'd 463 F.2d 752 (2d Cir., 1972) cert dis. 413 U.S. 701 (1973), the court granted defendant's summary judgment motion prior to plaintiff conducting any discovery when it was shown -- as here -- the antitrust claim was plead amongst a great number of meritless claims.

35. In the absence of disputed facts, the mere ability of the plaintiffs to plead the elements of a group boycott does not overcome the Post's clear right to summary judgment.

36. We do not here ask this Court to resolve any issue of material fact. Plaintiffs' sole "fact" in support of the boycott claim is the alleged parallel behavior. There is nothing in the record which even suggests the Post's decision was other than an independent one as its employees have so sworn.

37. If this Court were to deny the Post's motion and direct this claim to proceed to discovery -- even limited discovery -- it would mean that, as a matter of law, every

time a number of companies said "no" to someone, they could be sued on a group boycott theory and be forced to bear the cost and inconvenience of litigation until discovery established that the plaintiff had no facts to support a wild antitrust claim.

38. Accordingly, pursuant to Rule 56, Fed. R. Civ. P., this Court should grant the Post summary judgment on the Section 1 Sherman Act claims raised by the plaintiffs.

Morris B. Abram

Sworn to before me this
17th day of August, 1976.

William B. Pollard

WILLIAM B. POLLARD III
Notary Public, State of New York
No. 31-4616545
Qualified in New York County
Commission Expires March 30, 1977

A 134

EXHIBIT A

DAILY NEWS
Page 6
July 23, 1976

# S killers

ce force carried out today the ree men believed to be the slay-

blast to a getaway car being started by a third man.

Seven persons were detained during the night under an anti-terrorist law that allows suspects to be held 48 hours without trial. Police sources said that the three wanted men were not thought to be among those picked up so far.

The Irish government offered a $36,000 reward for conviction of the killers.

Hundreds of citizens filed into the British Embassy in Dublin today to sign a book of condolences for Ewart-Biggs, a dashing diplomat who wore a black monocle in place of an eye he lost at the battle of El Alamein and who wrote detective novels in his spare time.

Kamal Jumblatt
*"We've got to organize"*


SEE NEW YORK OUR WAY

CIRCLE LINE SIGHTSEEING YACHTS—35 thrilling miles—3 breeze-filled hours—sail completely around Manhattan. America's favorite boat ride!

SAILINGS: Every half-hour 9:30 thru 3:30 then 4:30 & 5:30
YACHTS SAIL FROM PIER 83, FOOT OF WEST 43RD STREET
PHONE: 563-3200

CIRCLE LINE



*This advertisement is neither an offer to sell nor a solicitation of an offer to buy any of these securities. The offer is made only by the Offering Circular.*

NEW ISSUE

100,000 Shares, with Maximum Continent Compound Interest of 25% Per Year; $5.00 Par Value; Redeemable and Callable; in the Lawsuit

CHRISTIAN THEE v. GENERAL MILLS, INC.
GENERAL MILLS FUN GROUP, INC. (formerly name PARKER BROTHERS, INC.)
AND MARVIN GLASS & ASSOCIATES

PRICE: $5.00 PER SHARE

*Copies of the Offering Circular may be obtained from the undersigned only in states in which the undersigned is qualified to act and in which the Offering may be legally distributed.*

CHRISTIAN THEE
76 State Street
Brooklyn, N.Y. 11201
(212) 834-1513



New York State Lottery

UBLIC NOTICE

lders of tickets dated October 23, 1975

| NNING NUMBERS | DOUBLE-UP NUMBER |
|---|---|
| 164103 | 3 |
| 792979 | (All prizes double if you match this number) |
| 828945 | |

e last 6 digits of your ticket match one of the winning


BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - - x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, : 76 Civ. 1217 (ERN)

-against- : AFFIDAVIT

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

BYRON S. GREENBERG, first being duly sworn, deposes and says:

1. I am the General Manager and a Director of the New York Post Corporation (the "Post"). I make this affidavit in support of the Post's motion for summary judgment on the anti-trust claims made by the plaintiffs.

2. I have been the Post's General Manager for two years and an employee of the Post for 40 years. I am fully familiar with the operations, policies and procedures of the Post.

3. I note that Plaintiffs' claim the Post prints news stories which "tout" certain securities and disparage others. Since Plaintiffs' set forth no facts to support this irresponsible charge, I respond only to keep the record straight. Every news story printed in the Post appears because, in our journalistic opinion, it is news-worthy and merits publication. The Post does not "tout" or disparage securities in any manner.

4. It has always been the policy of the Post to judge each advertisement submitted for publication on its own merits. I have no reason to believe the Thee tombstone was subjected to any other consideration by the Post's Advertising Department.

5. On June 25, 1975, Lawrence Goldreyer, the Post's Financial Advertising Director ("Goldreyer") told me that Carl E. Person ("Person") wanted to speak with an officer of the Post concerning the decision not to accept and publish a tombstone announcing a public offering by Christian Thee ("Thee").

6. Goldreyer told me of the facts surrounding the decision and sent me the material submitted by Thee. After reviewing the material, I called Person. I simply told him what he already knew: the Post had declined to publish the Thee tombstone. I did not tell Person that the Post frequently declines to publish tombstone advertisements.

7. I did not participate in the decision to decline to publish the Thee tombstone. In fact, I did not learn of the matter until Goldreyer called me-after Person's office had been told of the Post's decision. Obviously, I did not discuss the Thee tombstone with Goldreyer or Richard LeLong, the two Post employees who considered this advertisement, prior to their independent business judgment to decline acceptance of the Thee tombstone for publication.

8. At the time I spoke with Person, I was not aware of any tombstone advertisements the Post has declined to publish. Arthur Brody, the Post's Advertising Director,

has told me that neither he nor his staff can recall even one tombstone advertisement -- other than Thee's -- that the Post has declined to publish.

9. I have never been told to accept or reject for publication any tombstone advertisement on the basis of the identity of the security's issuer or seller, I have never told anyone to accept or reject a tombstone advertisement on that basis, nor have I ever accepted or rejected a tombstone advertisement on that basis.

10. The allegation that the Post has conspired with the New York Times, the Wall Street Journal and other publications to establish a "selective publication policy" of publishing only the tombstone advertisements of major corporations and governmental agencies is palpably false.

11. I have never discussed with anyone by letter, telephone, personal meeting or any other means of communication this so-called "selective publication policy"; nor have I agreed with anyone to implement such a policy.

12. In addition, I have never heard anyone discuss such a policy or conspiracy to implement it; nor have I ever been told of any such discussions.

13. Given my duties, if the Post was a part of the conspiracy the plaintiffs allege exists, I would be aware of it. I know of no such conspiracy.

Byron S. Greenberg

Sworn to before me this
17th day of August, 1976.

STEPHEN P. LINSEY
Notary Public, State of New York
No. 03-4504739
Qualified in Bronx County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - -x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- :

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - -x

76 Civ. 1217 (ERN)

AFFIDAVIT

STATE OF NEW YORK )
: ss:
COUNTY OF NEW YORK )

ARTHUR BRODY, first being duly sworn, deposes and says:

1. I am the Advertising Director of the New York Post Corporation (the "Post"). I make this affidavit in support of the Post's motion for summary judgment on the anti-trust claims raised by the plaintiffs.

2. I have been the Advertising Director of the Post for 6 years and an employee of the Post for 30 years. I am fully familiar with the operations, policies and procedures of my department.

3. I did not participate in the decision to decline to publish the Thee tombstone. In fact, I did not learn of the matter until after the decision had been made and communicated to Person's office. Obviously, I did not discuss the Thee tombstone with the two members of my staff who considered the advertisement, Lawrence Goldreyer and Richard LeLong, prior to their independent business judgment to decline acceptance of the Thee tombstone for publication.

4. It is the policy of the Post to judge each advertisement submitted for publication on its own merits. I have consistently so informed my staff.

5. I have never been told to accept or reject for publication any tombstone advertisement on the basis of the identity of the security's issuer or seller; I have never told anyone to accept or reject a tombstone advertisement on that basis; nor have I ever accepted or rejected a tombstone advertisement on that basis.

6. The records of my department show that, to the best of our knowledge, since January 1, 1976 eleven tombstone advertisements have been submitted for publication. Ten have been printed. Other than the Thee tombstones, I cannot recall any instance where the Post declined to publish a submitted tombstone advertisement.

7. The allegation that the Post has conspired with The New York Times, The Wall Street Journal and other publications to establish a "selective publication policy" of printing only the tombstone advertisements of major corporations and governmental agencies is just not true.

8. I have never discussed with anyone by letter, telephone, personal meeting or any other means of communication this "selective publication policy;" nor have I agreed with anyone to implement such a policy.

9. In addition, I have never heard anyone discuss this so-called policy or a conspiracy to implement it; nor have I ever been told of any such discussions.

10. Given my duties, if the Post was a part of the conspiracy the plaintiffs allege exists, I would be aware of it. I know of no such conspiracy.

Arthur Brody

Arthur Brody

Sworn to before me this
17th day of August, 1976.

Stephen P. Linsey

STEPHEN P. LINSEY
Notary Public, State of New York
No. 03-4504739
Qualified in Bronx County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - -x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- : AFFIDAVIT

:

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK )
: ss:
COUNTY OF NEW YORK )

LAWRENCE GOLDREYER, first being duly sworn, deposes and says

1. I am the Financial Advertising Director of the New York Post Corporation (the "Post"). I make this affidavit in support of the Post's motion for summary judgment on the antitrust issues raised by the plaintiffs.

2. I have been employed by the Post for 41 years and its Financial Advertising Director for 10 years. I am fully familiar with the workings of my department and the advertising department as a whole.

3. On June 22 and 23, 1976, Richard LeLong ("LeLong") and I discussed a proposed tombstone advertisement submitted to the Post by Carl E. Person ("Person") on behalf of Christian Thee ("Thee"). In the exercise of our independent business judgment, LeLong and I decided that the Post would not accept and publish the Thee tombstone. LeLong later told me that he called Person's office and told them of our decision.

4. In making this decision not to accept the Thee tombstone, I did not discuss the Thee tombstone with anyone other than LeLong.

5. I have never been told by anyone to accept or reject tombstone advertisements based upon the identity of the security's issuer or seller or any other such arbitrary standard; I have never told anyone to accept or reject tombstone advertisements on that basis; nor have I ever accepted or rejected a tombstone on that basis. Indeed, I have never heard of any publication accepting or rejecting tombstone advertisements on the basis of the security's issuer or seller.

6. It is the policy of the Post - and I have always told my salespeople this - that all advertisements submitted for publication are to be judged solely on their merits.

7. On June 25 Person called me. He asked about the Post's decision. I told him that, as LeLong had told his office, the Post had declined to publish the Thee tombstone. Person then asked to be referred to an officer of this company. Since my superior, Arthur Brody, the Post's Advertising Director, was in a meeting, I referred Person to Byron S. Greenberg, the Post's General Manager.

8. I did not tell Person that the Post frequently rejects tombstone advertisements. Indeed, I could not have made that statement because that is just not the fact. Based upon my knowledge as the Post's Financial Advertising Director, other than the Thee tombstone, the Post has printed every tombstone submitted for publication during the past four years. Prior to that, I can recall no specific instance where the Post declined to publish an offered tombstone.

9. The allegation that the Post has conspired with The New York Times, the Wall Street Journal and other publications to establish a "selective publication policy" of printing only tombstone advertisements submitted by major corporations and governmental agencies is untrue and absurd. I have never met with, talked to, discussed with or communicated by any other means with anyone about any "selective publication policy"; nor have I agreed with anyone to implement such a policy. In addition, I have never heard any Post employee discuss this so-called "selective publication policy," let alone a conspiracy to implement it.

10. Given my duties, if the conspiracy plaintiffs allege the Post is a part of existed, I would have to know about it. I know of no such conspiracy.

Lawrence Goldreyer

Lawrence Goldreyer

Sworn to before me this

13th day of August, 1976

William B. Pollard

WILLIAM B. POLLARD III
Notary Public, State of New York
No. 31-4616545
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, : 76 Civ. 1217 (ERN)

-against- : AFFIDAVIT

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK )

RICHARD LELONG, first being duly sworn, deposes and says:

1. I am a salesman in the financial advertising department of the New York Post Corporation (the "Post"). I make this affidavit in support of the Post's motion for summary judgment on the antitrust claims raised by the plaintiffs.

2. On June 22, 1976 a man I later learned to be Ira J. Ehrlick ("Ehrlick") approached me at the Post. Ehrlick told me he was an employee of plaintiff Carl E. Person ("Person") and that Person represented plaintiff Christian Thee ("Thee"). Ehrlick gave me a proposed tombstone advertisement and a prospectus for a securities offering being made by Thee. Ehrlick told me that Thee wanted the Post to publish the tombstone.

3. I told Ehrlick that the proposed advertisement would have to be submitted to the Post's advertisement acceptance committee. Ehrlick then left.

4. On June 22 and 23, 1976 I discussed the Thee tombstone with my immediate superior, Lawrence Goldreyer, the Post's Financial Advertising Director ("Goldreyer"). In the exercise of our independent business judgment, Goldreyer and I decided not to accept the Thee tombstone for publication in the Post.

5. In making this decision, I did not discuss the Thee tombstone with anyone other than Goldreyer and Ehrlick.

6. On June 23, 1976 after a discussion with Goldreyer, I called Person's office. I am told I spoke with Ehrlick. I told the person I spoke with that the Post had declined to accept the Thee tombstone advertisement for publication.

7. I did not tell the person I spoke with that the Post frequently declines to publish tombstones. During my employment with the Post other than the Thee tombstone, I am aware of no tombstone the Post has declined to print.

8. I have never been told by anyone to accept or reject tombstone advertisements based upon the identity of the security's issuer or seller or any other such arbitrary standard; I have never told anyone to accept or reject tombstone advertisements on this basis; nor have I ever accepted or rejected tombstone advertisements on this basis. Indeed, I have never heard of any publication accepting or rejecting tombstone [illegible]ertisements solely on the basis of the identity of [illegible]e security's issuer or seller.

9. My superiors at the Post have told me that it

is the Post's policy to judge each offered advertisement on its own merits. I have never deviated from this policy.

10. The allegation that the Post has conspired with The New York Times, The Wall Street Journal and other publications to establish a "selective publication policy" of printing only the tombstone advertisements of major corporations and governmental agencies is not true.

11. I have never discussed with anyone by letter, telephone, personal meeting or any other means of communication this "selective publication policy"; nor have I agreed with anyone to implement such a policy.

12. In addition, I have never heard anyone discuss this so-called policy or a conspiracy to implement it; nor have I ever been told of any such discussions.

13. Given my duties, if the Post was a part of the conspiracy the plaintiffs allege exists, I would be aware of it. I know of no such conspiracy.

Richard LeLong

Richard LeLong

Sworn to before me this
17th day of August, 1976.

Stephen P. Linsey

STEPHEN P. LINSEY
Notary Public, State of New York
No. 03-4504739
Qualified in Bronx County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, Plaintiffs, | : | 76 Civ. 1217 (ERN) |
| -against- | : | STATEMENT PURSUANT TO RULE 9(g) |
| NEW YORK POST CORPORATION, Defendant. | : | |

- - - - - - - - - - - - - - - - - - - - - - - -x

Defendant New York Post Corporation moves for summary judgment dismissing the Sherman Act § 1 claims. Pursuant to Rule 9(g) of the General Rules of this Court, defendants contend that there is no genuine issue to be tried as to the following material facts:

1. The New York Post Corporation (the "Post") is the publisher of the New York Post, a newspaper of general circulation in the metropolitan area.

2. On June 22, 1976 Christian Thee ("Thee") submitted to Richard LeLong ("LeLong"), a Post financial advertising salesman, a proposed tombstone advertisement announcing a public securities offering by Thee.

3. On June 23, 1976 LeLong called the office of Carl E. Person ("Person"), an attorney representing Thee, and told the person he spoke with that the Post had declined to accept the Thee advertisement for publication.

4. LeLong and Lawrence Goldreyer, the Post's Financial Advertising Director, alone and without discussing the issue with anyone else -- other than Person's employee who delivered the proposed advertisement -- decided in the exercise of their independent business judgment to decline to accept and publish the Thee tombstone advertisement.

5. Neither LeLong, Goldreyer, Arthur Brody, the Post Advertising Director, nor Byron S. Greenberg, the Post General Manager, has ever

a. been told to accept or reject tombstone advertisements for publication in the Post on the basis of the identity of the security's issuer or seller;

b. told anyone to accept or reject tombstone advertisements for publication in the Post on the basis of the identity of the security's issuer or seller;

c. accepted or rejected tombstone advertisements for publication in the Post on the basis of the identity of the security's issuer or seller; or

d. discussed with anyone by letter, telephone, personal meeting or other means of communication accepting or rejecting tombstone advertisements in any publication on the basis of the identity of the security's issuer or seller.

6. Other than the Thee tombstone advertisement, neither Greenberg, Brody, Goldreyer -- employees of 30 and 40 years tenure -- or LeLong can recall a single tombstone advertisement the Post declined to accept and publish.

7. The Post judges each submitted advertisement on its own merits.

Dated: New York, New York
August 17, 1976

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON
Attorneys for Defendant New York
Post Corporation
345 Park Avenue
New York, New York 10022
(212) 644-8000

STIPULATION SCHEDULING SERVICE AND RETURN DATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ SEP 3 1976 ★
TIME A.M. .....
P.M. .....

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CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- :

NEW YORK POST CORPORATION, :

Defendant. :

----------x

76 C 1217 (ERN)

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this action that:

RPP
WBP

(1) On or before September 10, 1976, the plaintiffs shall serve on the Post all answering papers ~~including any cross-motions~~ in response to the Post's motion to dismiss and for other relief.

(2) On or before September 16, 1976, the Post shall serve all reply papers to any such answering papers served by the plaintiffs.

RPP
WBP

(3) The return date for the plaintiffs' motion for a preliminary injunction and for the Post's motion, ~~and cross-motions to be made by the plaintiffs on or before September 10, 1976~~ is September 20, 1976 at 2:00 p.m. before the Honorable Edward R. Neaher, United States Courthouse, 225 Cadman Plaza, Brooklyn, New York.

Dated: New York, New York
September 1, 1976

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON

William B. Pollard

William B. Pollard
Attorneys for Defendant
345 Park Avenue
New, New York 10022
(212) 644-8175

Richard J. Prentiss, Jr.

Richard J. Prentiss, Jr.
Attorney for Plaintiff
Christian Thee
35 E. 72nd Street
New York, New York 10021
(212) 628-2400

Carl E. Person

Carl E. Person, Pro Se
132 Nassau Street
New York, New York 10038
(212) 349-4616

Brooklyn, New York
September 2, 1976

SO ORDERED:

Edward R. Neaher

U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | |
| Plaintiffs, | : | 76 C 1217 (ERN) |
| -against- | : | NOTICE OF CROSS-MOTION |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

PLEASE TAKE NOTICE that, upon the annexed affidavits of Carl E. Person, sworn to September 7, 1976, Christian Thee, sworn to September 6, 1976, and Ira J. Ehrlich, sworn to September 7, 1976, and upon all other papers and proceedings heretofore had herein, plaintiff Person will move this Court (by way of cross-motion) before Honorable Edward R. Neaher at the United States Court House, 225 Cadman Plaza East, Brooklyn, New York, on September 20, 1976 at 2:00 p.m., or as soon thereafter as counsel and pro se plaintiff Person can be heard, for an order,

(i) disqualifying and removing Messrs. Paul, Weiss, Rifkind, Wharton and Garrison as attorneys for defendant in this action by reason of

(a) a substantial conflict of interest among defendant, defendant's attorneys and clients of defendant's attorneys in other actions;

(b) the substantial likelihood that such conflict has prejudiced and will continue to prejudice plaintiffs in this action; and

(c) plaintiffs' right to have this litigation proceed

without continuation of the conspiracy alleged by plaintiffs;

(ii) permitting plaintiffs to obtain discovery under Rules 26 and 56(f), F.R.Civ.P., and granting a continuance of defendant's motion for (partial) summary judgment;

(iii) taxing defendant plaintiffs' costs and attorneys' fees (including the value of plaintiff Person's legal time) in opposing defendant's motion for costs and attorneys' fees; and

(iv) for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 7, 1976

Yours, etc.

Carl E. Person, Pro Se
132 Nassau Street
New York, N.Y. 10038
(212) 349-4616

TO: Richard J. Prentiss, Jr.
Attorney for Plaintiff Christian Th...
35 E. 72nd Street
New York, N.Y. 10021
(212) 628-2400

William B. Pollard, III, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
Attorneys for Defendant
345 Park Avenue
New York, N.Y. 10022
(212) 644-8000

PERSON AFF'T IN SUPPORT OF CROSS-MOTION, ORIG. MOTION
AND IN OPPOSITION TO DEFENDANT'S MOTION WITH EXHIBITS 1-5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARL E. PERSON and CHRISTIAN THEE, : 76 C 1217 (ERN)

Plaintiffs, : PERSON AFFIDAVIT

-against- :

NEW YORK POST CORPORATION, :

Defendant. :

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STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK)

CARL E. PERSON, being duly sworn, deposes and says:

1. I am a plaintiff in this action, am fully familiar with all prior proceedings and the facts stated herein, and make this affidavit in further support of plaintiffs' preliminary injunction motion; in opposition to defendant's motion to dismiss, for partial summary judgment, attorneys' fees and other relief; and in support of my cross-motion to disqualify and remove defendant's attorneys, for a continuance and discovery relating to defendant's Rule 56 summary judgment motion, attorneys' fees and other relief.

2. I am unable to present by affidavits facts essential to justify my opposition to defendant's motion for partial summary judgment on the antitrust conspiracy (§ 1, Sherman Act) claims because most of the essential facts needed by plaintiffs to prove their claims are known only to defendant,

its co-conspirators and perhaps others. See my Statement under Rule 9(g) for a statement of the essential facts (based on information and belief, for the most part) which I plan to prove. It is essential that plaintiffs obtain discovery of defendants, the co-conspirators and any others to be able to provide the facts essential to justify plaintiffs' opposition to defendant's motion.

3. Plaintiffs have undergone a considerable effort and monetary expense (amounting to thousands of out-of-pocket dollars, much of which has been advanced by me, and about $25,000 in value of legal services) to attempt to sell the shares. The description of my damages and other injuries at pp. 40-42 of my Memorandum, dated September 6, 1976, is accurate (with the reservation that the million-dollar damage figures need to be proven by one or more expert witnesses at the time of trial).

4. Plaintiffs made and are continuing to make an effort to sell the shares. My staff has sent out copies of the offering circular, subscription form and transmittal letter to all New York residents (other than corporations and associations) who inquire about the offering; nevertheless, the type of person who has responded to the tombstone published in the Daily News (and tomestone in each of 2 other but inconsequential newspapers) did not buy any shares and such person does not appear to be the type of inquirer plaintiffs would have obtained if they had been allowed to advertise in the Post, New York Times and Wall Street Journal. The readers of such publications could be expected to respond to tombstone

advertisements and buy the offered shares, judging from the fact that the securities industry appears to be using such papers regularly to run their own tombstones. Furthermore, the uniqueness of the offering and the absolute safety of principal involved necessitates the conclusion that such shares could be sold through tombstones in such newspapers, if given the opportunity.

5. I never indicated to Thee that any publication would reject his tombstones, believing that the high quality of the issue would require each publication to accept the tombstone if it accepted any tombstones at all, assuming the publication selected on the basis of comparative merits among the offerings themselves (and not on the basis of what the issuer might do to major advertisers in the newspaper). Although I was aware that newspapers do in fact reject advertising of various types (to protect their major advertisers from competition), I did not believe they would do so in the case of Thee's offering, because of the high quality involved. Even though I was aware that some major daily newspapers in New York City, including the New York Times and the Wall Street Journal, have rejected tombstones in past years, I believed that their rationale was to reject tombstones on the basis of risk of loss of principal, a category in which most new businesses based on a new idea would fall, and therefore allow the newspapers to reject the ad in order to protect their major advertisers.

6. I have been a steady reader of the Post for years, and have seen various tombstone advertisements published in the Post prior to my decision with Thee to offer litigation shares through a Regulation A public offering; also, I have seen other Regulation A offerings published in the Post (including

the tombstone for a public offering of shares of stock in Belmont Franchises, an apparent "start up" company, several years ago); and I had no reason to conclude that the Post would refuse to print the tombstone for the Thee offering, inasmuch as the offering had been reviewed by the SEC and was far safer than any other issue advertised in the Post, with few if any exceptions; also, I have never seen any notices by the Post that it does not publish all tombstones offered to it (subject to satisfactory arrangements for payment, of course), or any description by the Post of the basis on which it accepts or rejects submitted tombstones. The Post's rate card carries no notice, either. I have had the occasion at various times during the past years to look at the Post's rate card, directly or by reference to Standard Rate and Data Service - Newspapers.

7. I believed that the offered shares probably could be sold by Thee on a self-underwritten basis by the placement of tombstone advertising in key major daily newspapers in New York City, including the Post, particularly because of the uniqueness in selling shares in a lawsuit and the highest quality of the issue, far exceeding the quality of any other issue ever offered, virtually (structured so that any market price would have to be higher than the offering price; so that the issue grew more valuable through accrual of contingent interest of 25% per year, compounded annually and unreduced by taxes) by the passage of time, as long as the litigation was progress; so that any investor could get 100% or virtually 100% of his investment back on very short notice). Accordingly, I relied upon the Post's implied representations of willingness to publish all tombstones offered (at least as to Regulation A or registered offerings, with satisfactory

payment arrangements), when deciding to seek public financing for Thee's litigation. As a consequence, Thee and I were defrauded, and I have suffered the damages and other injuries referred to in ¶ 3 above, because of my reliance on the Post's implied, material representations, which turned out to be false; the continued activities of the Post are preventing plaintiffs from selling the shares.

8. The illegal investment advice of the Post (non-disclosed tombstone selection procedure) is the fraud claimed by plaintiffs, which is the same fraud practiced by defendant on its readers, as a result of which the market for plaintiffs' shares is fraudulently taken away from plaintiffs.

9. THE FOLLOWING IS A VERIFICATION OF PLEADINGS: I have read the 2nd Amended Complaint, dated July 21, 1976, and my Statement pursuant to Rule 9(g), dated September 7, 1976, and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, I believe the matters therein stated to be true.

10. Within days after filing my 2nd action against the Bar Association, to establish the right of my clients and myself to sell shares in lawsuits, I advised Paul, Weiss of the intention of the Nabcor Plaintiffs and myself to sell shares in the Nabcor Action; and from time to time thereafter I have advised the firm of these continued plans. A copy of

an article in Time, edition of May 3, 1976, at p. 46 (a copy of which is annexed hereto as Exhibit 1) was discussed with an associate of Paul, Weiss on or about the date thereof, and a copy of such article was recently offered to the Court in the Nabcor Action by Paul, Weiss, as an exhibit to the affidavit of partner Martin Kleinbard, Esq. In his affidavit, Mr. Kleinbard stated:

> "20. Any notion that these plaintiffs are impecuneous and should not be forced to bear these costs should be rejected out of hand in light of plaintiffs' demonstrated imagination in devising new ways to finance this lawsuit-turned-crusade. For example, plaintiffs' counsel recently was the subject of an article in Time concerning his innovative plans for selling shares in any recovery the plaintiffs may obtain in this case. (A copy of the article is annexed as Exhibit ...)" p. 8, Aff't of 9/1/76

Mr. Kleinbard did not state that he is aware that Nabcor's planned financing has not yet taken place, and that Nabcor is in dire need of funds.

11. The statements set forth starting with the 2nd paragraph on p. 4 through the 6th line of p. 8 of my Memorandum, dated September 6, 1976, are true. These statements relate to Paul, Weiss' activities and my filing of my 2nd Bar Association action, 75 C 1473, to establish the legality of selling shares in lawsuits. A copy of the amended complaint, dated July 4, 1976, is annexed hereto as Exhibit 2. Also, a copy of the Grievance Committee's letter to me, dated May 20, 1975, is annexed hereto as Exhibit 3.

12. My statements at pp. 9-10 in my Memorandum dated September 6th about Messrs. White & Case, Roger M. Blough, Esq., and The Business Roundtable are true. Annexed hereto as Exhibit 4 is a copy of an affidavit

BEST COPY AVAILABLE

by me, sworn to December 2, 1975, together with Exhibits A through C thereto, which sets forth additional detail about the foregoing persons, and the problems being created for plaintiffs as a result. The statements made by me in the affidavit are true.

13. Inasmuch as Judge Neaher, in a recent opinion, criticized Galaxy Foods or certain officials thereof, in a proceeding before him, a company which I had referred to at ¶ 34, p. 17 of my affidavit sworn to July 2, 1976, I believe it is important for me to annex, as Exhibit 5, a copy of a 8/12/76 Wall Street Journal article about Futuristic Foods, Inc., also mentioned in my ¶ 34, a company in the same business as Galaxy which received the same discriminatory editorial treatment from the Post, in furtherance of its policy under equal conditions, to protect major advertisers and injure small competitors thereof. Also, if desired by the Court or any party, I will provide additional evidence about the bona fide nature of Galaxy's business idea in the marketing of food by warehouse and telephone, and argue how the willful activities of the Post and others (including the BBB) created the condition for Galaxy or other franchisors to be unable to fulfil their franchise agreements, especially where the business idea is new, unique and worthwhile. Activities by the Post and the BBB encourage unknowledgeable franchisees to seek refunds, and others not to buy franchises, with the resulting destruction of the capitalization of the franchisor in fulfillment of a conscious plan to destroy business competitors of the major advertisers in the Post. It is not unlikely that a grand jury could be convened to investigate this activity. I hasten to add that my purpose in setting forth this paragraph was not as implied criticism of Judge Neaher in any way, but to explain in part why I believe Galaxy and others like Galaxy eventually go out of business and leave their franchisees with nothing.

WHEREFORE, plaintiff respectfully requests that his motion for a preliminary injunction and cross-motion for

(i) disqualification and removal,

(ii) a continuance and discovery under Rules 26 and 56(f),

(iii) attorneys' fees and other costs, and

(iv) other relief as may be deemed just and proper,

be granted in their entirety, and that defendant's motion

(i) to dismiss,

(ii) for partial summary judgment on the Sherman Act § 1 claims,

(iii) for attorneys' fees and other costs, and

(iv) for other relief,

be denied in its entirety.

Carl E. Person, pro se
132 Nassau Street
New York, N.Y. 10038
(212) 349-4616

Subscribed and sworn to before me
this 7th day of September, 1976.

Notary Public

IRA J. EHRLICH
NOTARY PUBLIC, State of New York
No. 31-4780110
Qualified in New York County
Commission Expires March 30, 1977

TALL
120s
Towers over ordinary cigarettes
TALL
TALL
120s
Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health.
Filter: 20 mg. "tar", 1.5 mg. nicotine av. per cigarette by FTC method.

issue. Jack Landau, the main force behind the reporters' free-press committee, hopes for what he would consider a good compromise. "Before a judge could enter a restrictive order, he should be made to hold a hearing to explore all other possibilities [such as a change of venue]. At this hearing, not only the defense and prosecution but also the press could be heard on a proposed gag rule." Some answer with guidelines obviously is needed. Currently the third most litigated free-speech issue—after obscenity and libel—is the question of gag rules.

## Suits for Sale

"Can I show you something in a suit, sir?" the investment counselor might say unctuously. "A lawsuit I mean. A really blue-chip group of defendants and prospects for an impressive award of damages." Buying shares in a lawsuit? Why not, asks Manhattan Attorney Carl E. Person, who has reason to believe that he is on his way to creating just such an investment possibility.

Person is currently representing a small group of auto brokers in a complex, $300 million antitrust suit against the big four automakers, many of their New York franchise owners, and some of the New York newspapers they advertise in. To help him match the resources available to such weighty opposition, Person asked a federal judge to authorize two approaches guaranteed to horrify the bar: 1) the hiring of expert witnesses on a contingency basis under which they would be paid only if Person's clients won, and 2) allowing Person's clients to sell shares in the outcome of the suit to finance the costs (estimated at $1 million) of the action, which is already 5½ years old. While Federal Judge John F. Dooling Jr. did not rule directly on Person's claim, he has issued an opinion strongly implying that the lawyer has a point.

**New Market.** The bar's traditional ban on contingent fees for witnesses rests on the fear that they would hype their testimony—or worse—to increase the likelihood of victory and thus of getting paid. But Judge Dooling thinks the danger of distorted testimony is not significantly greater than in cases in which a witness is paid a straight fee for his presumably favorable expertise. As for the remarkable idea of selling shares in the ultimate damages, if any, the judge said that the law did not appear to prevent Person's plaintiffs from selling such shares, so long as investors had no say in how the case was fought legally.

Person had already become something of a bar rattler as one of a handful of attorneys who pressed legal claims that helped force the American Bar Association to reconsider its ban on lawyer advertising. Now, armed with the Dooling ruling, Person has asked the New York City bar about the ethics of his share sale, and is talking about a whole new stock market for lawsuits.

A 162
TALL
120s
All those extra puffs. Costs no more than 100's.
TALL
MENTHOL
120s
20 FILTER CIGARETTES
TALL

Exhibit 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| | | |
|---|---|---|
| CARL E. PERSON, | : | 75 C 1473 (JFD) |
| Plaintiff, | : | |
| -against- | : | AMENDED COMPLAINT |
| THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, | : | (Jury Demand) |
| SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT, | : | |
| SUPREME COURT, APPELLATE DIVISION, SECOND DEPARTMENT, and | : | |
| ATTORNEY GENERAL OF NEW YORK STATE, | : | |
| Defendants. | : | |

----------x

Plaintiff, acting pro se, as and for his amended complaint, respectfully alleges:

COUNT 1

(Conspiracy to Restrain Trade)

Jurisdiction

1. The jurisdiction of this court to hear count 1 of this complaint, against defendant THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, is based upon the original jurisdiction of this court to hear "any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies", and, as hereinafter set forth, this controversy involves § 1 of the Sherman Antitrust Act (15 U.S.C. § 1); §§ 4 and 16 of the Clayton Antitrust Act (15 U.S.C. §§ 15 and 26); and § 1337 of the Judicial Code (28 U.S.C. § 1337).

Venue

2. The defendant THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK is found, has an agent or transacts business in the Eastern District of New York. Venue is provided by § 4 of the Clayton Antitrust Act (15 U.S.C. § 15).

Plaintiff

3. Plaintiff, Carl E. Person, resided at 66-19 52nd Avenue, Queens, New York 11378 at the commencement of this action, and now resides at 329 E. 63rd Street, New York, New York 10021, and has his office for practice of law at 132 Nassau Street, New York, New York 10038.

Defendants

4. The Association of the Bar of the City of New York (a defendant in all counts of this amended complaint) has its principal place of business at 42 West 44th Street, New York, New York 10036. Defendant was founded in 1870.

5. The Supreme Court, Appellate Division, First Department, of the State of New York (a defendant in counts 2 and 3 of this amended complaint), consisting of 7 Justices of the Supreme Court, has its principal place of business at Madison Avenue and 25th Street, New York, New York 10010.

6. The Supreme Court, Appellate Division, Second Department, of the State of New York (a defendant in counts 2 and 3 of this amended complaint), consisting of 7 Justices of the Supreme Court, has its principal place of business at Monroe Place, Brooklyn, New York 11201.

7. The Attorney General of New York State (a defendant in counts 2 and 3 of this amended complaint) has his principal place of business at No. 2 World Trade Center, New York, New York 10047.

8. Each of the defendants described in ¶¶ 5-7 above is sued in an individual capacity and not as a governmental official or body.

Co-Conspirators

9A. Various persons (including bar associations, courts and attorneys who are not made defendants in this action or this count 1) participated as co-conspirators in the illegal activities charged herein and performed acts or made statements in furtherance thereof. These persons (hereinafter, the "Co-Conspirators") include:

(a) American Bar Association (founded in 1878);

(b) The New York State Bar Association (founded in 1876);

(c) Appellate Divisions of the Supreme Court of New York State for the First, Second, Third and Fourth Departments;

(d) Court of Appeals of New York State;

(e) Other bar associations and courts in New York State or throughout the United States which have adopted or are enforcing laws or rules which prohibit clients pursuing antitrust claims and/or their attorneys working on a contingent-fee basis from obtaining the money to pay the litigation expenses by selling a percentage of their respective interests in the antitrust claims to private or public investors and from employing expert witnesses to testify at the trial on a contingent-fee basis;

(f) Attorneys in the Eastern or Southern Districts of New York, elsewhere in New York State or elsewhere in the United States, including members of bar associations, who have participated in the adoption or enforcement of laws or rules which prohibit the activities described in subparagraph (e) above; and

(g) Clients of any of the attorneys described in the preceding subparagraph (f) who give encouragement to the attorneys in their efforts to prevent the activities described in subparagraph (e) above for the purpose of making it more difficult if not impossible for small businesses to enforce any of their antitrust claims against any of these clients.

Background

9B. Plaintiff is the attorney for each of the 10 plaintiffs in an antitrust action entitled National Auto Brokers Corp. v. General Motors Corporation (the "Nabcor Action"), commenced during 1970 in the United States District Court for the Southern District of New York under Index No. 70 Civ. 5421. The plaintiffs in the Nabcor Action are National Auto Brokers Corp., a Pennsylvania corporation ("Nabcor"), Nabcor's two founders (Frank and Anthony Maiorana) and 7 Nabcor franchisees (hereinafter collectively referred to as the "Nabcor Plaintiffs").

9C. There are 29 defendants in the Nabcor Action, including General Motors Corporation ("GM"), General Motors Acceptance Corporation ("GMAC"), Ford Motor Company, Chrysler Corporation, American Motors Corporation, First National City Bank and 23 other defendants, consisting of one or more franchised new-car dealers, automobile dealer associations, banks, Better Business Bureaus and newspapers (hereinafter collectively referred to as the "Nabcor Defendants").

9D. The Nabcor Plaintiffs in the Nabcor Action seek in the aggregate $300,000,000 (after trebling) for damages which they allege were sustained by them as a result of conspiratorial activities of the Nabcor Defendants which allegedly drove Nabcor and its 250 Nabcor franchisees out of the unique business of selling new cars to the public at substantial discounts in price. These conspiratorial activities are alleged in the Nabcor Action to include:

(a) Interference by GM and Ford with the business relationships of the Nabcor Plaintiffs with numerous franchisees of GM and Ford who were willing to supply new cars to the Nabcor Plaintiffs on a "fleet" or wholesale basis;

(b) Refusals by banks and other financial institutions to provide "indirect" (customer) financing for the benefit of prospective new-car customers of the Nabcor Plaintiffs unless the customers purchased the new cars from automobile dealers franchised by the automobile manufacturers;

(c) Issuance by the Better Business Bureaus of unprivileged, libelous reports on Nabcor and its franchisees to potential customers of Nabcor and its franchisees and to numerous major daily newspapers in which Nabcor and its franchisees sought to advertise new cars and/or franchises;

(d) Refusals by major daily newspapers in numerous cities throughout the United States to accept any additional new-car or franchise advertising from Nabcor or its franchisees;

(e) Pressure by associations of franchised new-car dealers and their members on the automobile manufacturers, banks, other financial institutions, newspapers, franchised automobile dealers who were supplying new cars to Nabcor and its franchisees and governmental agencies, to have them refuse to deal with Nabcor and its franchisees or otherwise unlawfully interfere with their unique system for marketing new cars to the public at discount prices; and

(f) Higher charges to Nabcor and its franchisees for the new cars they bought from franchised dealers than the charges paid by leasing companies to the same dealers, even though Nabcor and its franchisees were competing with the leasing companies in the resale of new cars.

9E. Two federal grand juries (Eastern District of New York and Western District of New York) were convened by the United States Justice Department to investigate charges by Nabcor and some of its franchisees, but no indictments were handed down. Nabcor's officials were not called to testify at either grand jury proceeding, and one of the federal officials working on Nabcor's complaints was hired by GM.

10. After commencement of the Nabcor Action, GM's attorneys are alleged to have solicited various persons to bring civil and/or criminal proceedings against Nabcor and/or its two founders.

11. Officials or employees of GM and GMAC are alleged to have had meetings and other communications with persons who removed all of Nabcor's records under gunpoint, which meetings and other communications took place before and after the gunpoint incident, and resulted in having GM or GMAC extend financing to such persons after the gunpoint event. GM and GMAC knew that the persons were willing to terminate the Nabcor Action if they were able to take control of Nabcor as a result of their removal of the Nabcor records. Plaintiff, Nabcor and its two founders caused the arrest of the 7 persons who participated in the robbery of Nabcor's records.

12. Neither Nabcor, a public company, nor any of the other Nabcor Plaintiffs have any present ability to pay the substantial litigation expenses needed by the Nabcor Plaintiffs to obtain a fair and speedy trial. As a result, the trial in the Nabcor Action (set for later in 1975 or early in 1976, as of the filing of the original complaint herein, and for September 27, 1976, as of the date of this amended complaint) may not result in substantial justice for the Nabcor Plaintiffs. Nabcor's past inability to pay for necessary litigation expenses in the Nabcor Action resulted in a substantial reduction in plaintiff's and the Nabcor Plaintiffs' ability to prosecute the Nabcor Action (especially in comparison to activities of the Nabcor Defendants in defense of the Nabcor Action), and such financial disability of the Nabcor Plaintiffs has had a noticeable and substantial adverse impact on the Nabcor Plaintiffs' ability to obtain a fair and speedy trial and just resolution of the issues, from commencement of the Nabcor Action in 1970 to the present. Such adverse impact cannot be wholly overcome even if all of the financing sought by plaintiff and the Nabcor Plaintiffs is obtained.

13. Plaintiff and the Nabcor Plaintiffs seek to offer and sell about 20% of their respective interests in the $300,000,000 antitrust claim (after

trebling) to raise the money needed by the Nabcor Plaintiffs to pay the substantial out-of-pocket expenses to be incurred to bring the Nabcor Action to a conclusion (including any appeals). None of the proceeds of the financing would be used to pay any legal fees to plaintiff.

14. Plaintiff, on behalf of the Nabcor Plaintiffs, recently commenced preliminary discussions with the President of Public Equity Corporation, of Larchmont, New York, to obtain the needed financing, pursuant to which Public Equity Corporation would be given a percentage of the entire antitrust claim (including a percentage of plaintiff's contingent-fee interest in the claims). Public Equity Corporation has indicated a willingness to provide the financing, although no agreement has been made.

15. On or about July 1, 1975, Public Equity Corporation, a business corporation for profit, received approval from the Securities and Exchange Commission to make a registered public offering of 480,000 shares of common stock to raise up to $2,400,000 from the public to finance "public-interest" litigation (among other activities relating to litigation), including antitrust litigation such as the Nabcor Action. In its prospectus, Public Equity Corporation warns prospective investors that existing rules, regulations and statutes raise serious doubts about the legality of such financing under such rules, regulations and statutes. Specifically, under existing New York law and bar association Disciplinary Rules, Public Equity Corporation and plaintiff could be charged with champerty, maintenance and (as to Public Equity Corporation) the unauthorized practice of law; also, plaintiff could be charged with splitting fees with a layman; other charges are also possible.

16. In the event a financing by Public Equity Corporation does not work out, plaintiff and the Nabcor Plaintiffs plan to seek other investors, by private or public offering, to provide financing for the Nabcor Action.

17. All of the proceeds of any such financing(s) would be used to finance the out-of-pocket expenses of the Nabcor Action, and none of the proceeds would be used to pay any legal fees to plaintiff. Some of the proceeds may be used to pay legal fees to attorneys having no affiliation with plaintiff.

18. Disciplinary Rules of defendant The Association of the Bar of the City of New York, rules of each of the four Appellate Divisions of the Supreme Court of the State of New York, and various provisions of the New York Judiciary Law prohibit or seem to prohibit the contemplated litigation financing, with a combined threat of disbarment, suspension, censure, injunction, criminal fines and jail sentences and investigations. See ¶¶ 45-B and 49 for the identification of each such rule and statutory provision.

19. Nabcor, its two founders and the other Nabcor Plaintiffs are in dire financial condition, which condition has resulted, allegedly, from the illegal activities of GM, GMAC, Ford and the other Nabcor Defendants, as described in the complaint in the Nabcor Action. Pursuant to its actual or implied obligations to its franchisees, Nabcor agreed to pay for the litigation expenses of the Nabcor franchisees who are plaintiffs in the Nabcor Action.

20. Nabcor and the other Nabcor Plaintiffs are unable to pay or borrow the substantial litigation expenses needed to bring the Nabcor Action to a speedy and just conclusion. As a result, plaintiff has been obliged over the past 5 years (before commencement of this action) to perform a substantially greater amount of paralegal services, ~~on~~ a contingent-fee basis, than would otherwise have been required of plaintiff, such as the transcription of depositions taken by tape recording machines pursuant to court order, and the typing and proofreading of documents which are listed in about 37 pages of docket sheets

In substantial excess of $200,000 in paralegal services have been advanced by or at the expense of plaintiff which was necessitated by the financial inability of the Nabcor Plaintiffs to properly finance their action.

21. In the Nabcor Action, GM appears to be paying most of the litigation expenses, directly or indirectly, for the benefit of all the Nabcor Defendants. GM has noticed and paid for substantially all of the depositions taken by any of the Nabcor Defendants during the 5 years of litigation. Most of the other discovery has been initiated and paid for by GM and its counsel, all for the benefit of the other Nabcor Defendants. The court has permitted this arrangement of litigation financing among the Nabcor Defendants.

22. GM or any of the other Nabcor Defendants is able to borrow money to pay for their expenses in defending the Nabcor Action, which would include the issuance of a promissory note or other security to the lenders (i.e., investors) without fear of any of the sanctions described in ¶ 18 above.

23. Plaintiff is employed as attorney for the Nabcor Plaintiffs on a 35% contingent-fee basis and would receive no part of the contemplated financing as a legal fee; some of the financing would be used to reimburse plaintiff for litigation expenses which have not yet been reimbursed.

24. The Nabcor Action was brought to establish the right of non-franchised (independent) new-car dealers or "automobile brokers" to sell new cars to the consuming public at substantial discount prices, in competition

with factory-franchised and factory-owned new-car dealerships, with savings to the consuming public ranging from about $200 to $1,000 per new car, in most instances.

25. Attorneys for GM and GMAC have advised the court that if the Nabcor Plaintiffs obtain the injunctive relief they seek, there would result a major change in the method of marketing new cars by the entire automobile industry in the United States. In essence, GM's attorneys are claiming that if the Nabcor Plaintiffs win the Nabcor Action, the franchised distribution system of the automobile manufacturers would be unable to withstand the competition of independent new-car dealers such as Nabcor and its franchisees, and new-car prices would drop substantially from the monopolistic level they now are at.

26. The Nabcor Plaintiffs have established that there are a substantial number of triable issues of fact, and the 2-3 months' trial, as of the filing of the original complaint, was scheduled to commence in late 1975 or early 1976, and as of the date of this amended complaint the first of four separate trials is scheduled to commence September 27, 1976.

27. The Nabcor Plaintiffs are unable to obtain adequate expert testimony in the fields of accounting, franchising, finances and economics because of their poor financial condition (caused by the Nabcor Defendants) and because of Disciplinary Rule 7-109(c) of defendant The Association of the Bar of the City of New York which prohibits plaintiff from using any expert witnesses (such as certified public accountants or economists knowledgeable about the automobile business) who are to be paid on a contingent-fee basis (percentage of claim and/or fixed amount). Under the Disciplinary Rules, GM and the other Nabcor Defendants are permitted to use (and actually have used

and plan to use) expert witnesses drawn from accounting firms which have enjoyed substantial profits from prior GM* business and can be expected to enjoy substantial profits from GM* business to be received and performed after the trial in the Nabcor Action, unless their testimony fails to live up to the expectations of GM.* This arrangement has a contingent interest far more substantial than the type of contingent arrangement sought by plaintiff, in which expert witnesses called by the Nabcor Plaintiffs would receive from their contingent interest (fixed amount and/or percentage) an amount of money far less in amount than the future profits from GM* which GM's* expert witnesses stand to lose. This Disciplinary Rule of defendant bar association is no more than a discriminatory rule which prohibits a poor litigant from maintaining an action under the pretext of "conflict of interest" but allows wealthy litigants to use expert witnesses who have an even greater conflict of interest. Nabcor needs at least $200,000 in services by persons who will testify as experts

28. Plaintiff also represents (on a contingent-fee basis) John G. O'Keeffe, the plaintiff in an action entitled O'Keeffe v. The Union Central Life Insurance Company, an antitrust action commenced during 1975 in the United States District Court for the Eastern District of New York under Index No. 75 C 548 (CCP).

29. Plaintiff and Mr. O'Keeffe seek to obtain financing to cover the substantial out-of-pocket litigation expenses by selling a percentage of Mr. O'Keeffe's $2,250,000 antitrust claim for damages (after trebling).

30. Plaintiff is the attorney for other persons who have antitrust claims now in litigation, and plaintiff seeks to arrange for expense financing for some or all of these antitrust actions (as well for any future clients with antitrust claims) with the prior consent of each of the clients.

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* Or other Nabcor Defendants with whom they do business.

31. In no case is it contemplated by plaintiff or his clients that any person or persons providing such financing would:

(a) have any right to control any part of the antitrust litigation;

(b) obtain any interest in any claim other than the antitrust claim;

(c) render any legal advice;

(d) engage in any unauthorized practice of law (although this point needs to be clarified under existing rules and statutes); or

(e) obtain, in the aggregate, 50% or more in interest in the antitrust claims in litigation.

It is expected, however, that the person or persons providing financing would render services of a paralegal nature in the Nabcor Action from time to time.

Trade and Commerce Involved

32. Plaintiff was admitted to the practice of law in the State of New York during 1962, and has practiced law in New York City continuously from 1962 to the present. From 1969 to the present, plaintiff has had at least 6 clients for plaintiff's legal services, in the area of antitrust law, who either resided or had its principal place of business outside of the State of New York. The quantum meruit value of plaintiff's legal services to these non-New York clients has exceeded $2,000,000 (performed by plaintiff on a "contingent-fee" basis, for the most part). Most of the allegedly illegal activities of other persons for which these clients are using plaintiff as their attorney to obtain recovery of damages under the federal antitrust laws (in the federal courts in the Eastern and Southern Districts of New York and the Eastern District of Pennsylvania) occurred outside of the State of New York. Damages to plaintiff's clients are alleged in such actions to have exceeded $100,000,000 in the aggregate (before trebling). Plaintiff, in connection with such litigation, has travelled to various states during the past 5 years, including Connecticut, Delaware, Florida, Illinois, Indiana, Maryland, New

Jersey, Pennsylvania, Virginia and to the District of Columbia, involving out-of-pocket expenses (incurred on behalf of the clients) in excess of $10,000.

33. The Co-Conspirator attorneys and their respective law firms in the Eastern and Southern Districts of New York which dominate the defendant The Association of the Bar of the City of New York and Co-Conspirator bar associations (and are responsible for the adoption or enforcement of the laws and rules which prohibit the financing of a plaintiff's antitrust claims (as summarized in ¶ 9A-e above) receive in the aggregate hundreds of millions or one or more billions of dollars each year in legal fees for their legal representation of most of the 500 largest and other major corporations in the United States. A substantial part of this legal representation involves matters in or relating to interstate commerce, such as representation in antitrust, securities, commercial banking and FTC matters.

National Policy

34. It is the policy of this nation to encourage private enforcement of the nation's antitrust laws, to assist the Justice Department, Federal Trade Commission and other federal agencies in enforcing such laws.

35. The federal agencies responsible for enforcement of the nation's antitrust laws have been inadequately financed from their inception to the present to achieve substantial enforcement of the antitrust laws, and they have not in fact achieved substantial enforcement from inception to the present.

36. Private antitrust claimants and their attorneys are considered to be "private attorneys general" for the enforcement of the nation's antitrust

laws; however, no federal financing is available to assist these private attorneys general in the performance of their quasi-public duties.

37. Most businesses and consumers are suffering damages as a result of antitrust law violations. For example, approximately 8-10,000,000 persons each year pay overcharges on new-car purchases amounting to $200 to $1,000 on each new-car purchase, in most instances. The Nabcor Action was brought to correct this situation.

38. Virtually all of the businesses and consumers suffering such damages from antitrust law violations cannot afford to enforce their rights under the antitrust laws and, as a result, they are prevented from obtaining justice. These same persons have been paying taxes for the governmental enforcement of such laws, but have seen very little in results. These same people are to be solicited by plaintiff and his clients for the financing needed to enforce the antitrust laws, in the event the substantial legal problems are resolved satisfactorily by this court.

39. Because of the financial inability of private persons to enforce the nation's antitrust laws, various public evils have developed, including the following:

(a) Competition has decreased substantially in most industries, together with opportunities for persons without substantial amounts of capital;

(b) Monopolies have been permitted to form and grow radically in size and importance in our economy;

(c) Consumers have been overcharged many billions of dollars in the form of higher prices and lower quality of goods and services, which has resulted in needless inflation and the development of "consumerism" which tends to limit opportunities for small businesses to an even further extent; higher prices for oil and oil products have resulted as well;

(d) The free-enterprise system has come to a virtual halt, which becomes a substantial threat to the existing political system in the United States;

(e) Small businesses and their owners have lost many billions of dollars in profits to the monopolies, which has resulted in an illegal, upward redistribution of wealth, unrelated to acceptable competitive factors;

(f) Only the rich have the financial capacity to enforce the antitrust laws, and they are the very persons who are least apt to do so; and

(g) Persons injured by persons violating the nation's antitrust laws are deprived of their (i) right to petition the court for a redress of their grievances; (ii) right to a fair and speedy trial; and (iii) right to alienate or sell the property interest they possess in the antitrust claims they possess in lieu of a profitable business, even though the claims are assignable under law.

40. The federal, state and city governmental agencies empowered to enforce the nation's and state's antitrust laws do not have sufficient resources to prosecute all apparent substantial violations of these laws, because of insufficient funding and because of other political considerations (such as not wishing to deter major corporations or their officials from making substantial campaign contributions).

41. The amount of money available to governmental agencies to prosecute alleged antitrust violators (criminally or civilly) is a very small fraction of the amount available to the alleged violators to defend themselves. The amount spent in the defense of a single alleged violator has exceeded the amount available to the Justice Department to enforce all of the nation's antitrust laws against all violators thereof for a whole year. Much less than this is available to state and local governmental agencies, resulting in virtually non-existent enforcement programs.

42. The present degree of enforcement of the nation's and states' antitrust laws is so minimal that governmental enforcement of such laws could be abolished and all enforcement activities carried out by private attorneys general, with or without federal funding, without any substantial adverse impact on the present status of the economy.

43. The public financing of antitrust actions would result in a substantially greater level of enforcement of the nation's antitrust laws than the present level of enforcement by governmental officials, and such private actions would be of substantial assistance to the governmental officials by helping them identify antitrust violations and obtain evidence, all at no cost to the government enforcers.

Combination or Conspiracy in Restraint of Trade

44. Plaintiff alleges that beginning in 1908 and continuing up to and including the date of this amended complaint, defendant The Association of the Bar of the City of New York and the Co-Conspirators have and now are engaged in a continuing unlawful combination or conspiracy unreasonably to restrain or monopolize trade and commerce (i) in the rendering and financing of legal and paralegal services for persons with antitrust claims or litigation arising under the nation's antitrust laws; and (ii) in other industries involving high concentrations of economic power through the scheme of making legal and paralegal services unavailable to smaller businesses and new entrants in the industries, in violation of § 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

45. As part of said unlawful combination or conspiracy and in order to accomplish the purposes thereof, defendant The Association of the Bar of the City of New York and one or more of the Co-Conspirators performed or caused performance of the following acts:

A. Upon information and belief, defendant The Association of the Bar of the City of New York participated in the adoption, during 1908, by the American Bar Association ("ABA") of the original 32 Canons of Professional Ethics, which were subsequently amended by the addition of Canons 33-47. Canons 13, 34, 42 and 47 prohibited an attorney and his client from selling part of the clients' antitrust claims and attorneys' contingent-fee to raise money to pay for expenses of the antitrust action.

B. The 47 Canons are the predecessor to the Code of Professional Responsibility (the "ABA Code") adopted by the ABA House of Delegates on August 12, 1969 to become effective for ABA members on January 1, 1970. Part of the ABA Code consists of a series of Disciplinary Rules ("DR's"), including the following about which plaintiff complains herein:

2-103(D)
2-106(A)
2-107(A)
3-101(A)
3-102
3-103
5-103(B)
5-107(C)
7-109(C).

The foregoing Disciplinary Rules prohibit or could be construed to prohibit the antitrust litigation financing which plaintiff and his clients seek to obtain, and prohibit the use of expert witnesses on a contingent-fee basis.

C. Defendant The Association of the Bar of the City of New York participated in many of the meetings with the ABA and other Co-Conspirators pursuant to which the ABA Code was discussed in draft form, including some or all of the Disciplinary Rules listed in subparagraph B above.

D. Acting through its Co-Conspirator members and possibly other Co-Conspirators, Co-Conspirator The New York State Bar Association adopted the 47 Canons in 1909 and the ABA Code effective January 1, 1970, including the

Disciplinary Rules listed in subparagraph B above.

E. Acting through its Co-Conspirator members and possibly other Co-Conspirators, defendant The Association of the Bar of the City of New York adopted the 32-47 Canons of the ABA during or after 1909, and the ABA Code, subject to reservations not relevant to this action, sometime during 1969-71, including the Disciplinary Rules listed in subparagraph B above.

F. Upon information and belief, defendant The Association of the Bar of the City of New York, through its Committee on Grievances and Executive Committee, has continually enforced each of the Canons and Disciplinary Rules as to attorneys practicing in New York City, through numerous disciplinary proceedings, some of which were commenced in the Appellate Division of the First or Second Department of the Appellate Division of the Supreme Court of the State of New York, and through the ever-present threat of prosecution.

G. Defendant The Association of the Bar of the City of New York obtains compensation from the Office of Court Administration of New York State to reimburse the bar association for its costs incurred in running its Grievance Committee.

H. Upon information and belief, the Appellate Divisions of the New York Supreme Court for the First and Second Departments have consistently upheld the Canons and Disciplinary Rules, and as a result all attorneys in the Eastern and Southern Districts of New York are threatened with disbarment, suspension or censure if they should violate any of the Disciplinary Rules.

46. Plaintiff and his clients have suffered damages amounting to many millions of dollars, at a minimum, as a result of the conspiratorial adoption of the Disciplinary Rules which prohibit the contemplated financing of antitrust litigation and use of expert witnesses on a contingent-fee basis in such antitrust litigation. Plaintiff seeks in damages the minimum amount needed to qualify for a trial by jury, but plaintiff waives any other damages and any award for legal fees.

COUNT 2

(Denial of Civil Rights)

Jurisdiction

47. The jurisdiction of this court to hear count 2 of this amended complaint, against defendants, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK; SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT; SUPREME COURT, APPELLATE DIVISION, SECOND DEPARTMENT and ATTORNEY GENERAL OF NEW YORK STATE, is based upon the original jurisdiction of this court under § 1343 of the Judicial Code (28 U.S.C. § 1343) to hear an action to "redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage" of the State of New York "of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States". Specifically, count 2 of this amended complaint is brought to redress the deprivation of rights, privileges and immunities secured to plaintiff by the:

(a) Interstate Commerce Clause, Art. 1, § 8 of the U.S. Constitution;

(b) Guarantee of a Republican Form of Government, Art. 6, § 4 of the U.S. Constitution;

(c) 1st Amendment to the U.S. Constitution - Right to Petition the Government for a Redress of Grievances, made applicable to the States by the 14th Amendment;

(d) 14th Amendment to the U.S. Constitution, § 1 -

Abridgement of Privileges or Immunities;
Deprivation of Property without Due Process of Law, both procedural and substantive; includes improper delegation of legislative power and illegal restraint upon right of alienation;
Denial of Equal Protection of Laws; and

(e) § 1983 of the Civil Rights Act (42 U.S.C. § 1983), providing equal rights under state and local law for citizens or other persons within the jurisdiction of the United States.

48. Plaintiff repeats and realleges each of the allegations contained in ¶¶ 1-46 above, and further alleges that defendant The Association of the Bar of the City of New York's activities in enforcing the Disciplinary Rules, court rules and provisions of the New York Judiciary Law listed in ¶ 49 below, which prohibit plaintiff and his client from obtaining financing for antitrust litigation and use of expert witnesses on a contingent-fee basis, constitute "state action" in violation of § 1983 of the Civil Rights Act (42 U.S.C. § 1983) by unduly limiting plaintiff's and plaintiff's clients' constitutional rights (identified in ¶ 47 above), and by depriving them of their right to act as a private attorney general to enforce the nation's antitrust laws.

49. Plaintiff further alleges that the following provisions of the New York Judiciary Law and Rules of the four Appellate Divisions of the Supreme Court of the State of New York prohibit or appear to prohibit plaintiff and his clients from obtaining the antitrust litigation financing they seek, and prohibit them from using expert witnesses on a contingent-fee basis:

Provisions of New York Judiciary Law:

§ 90(2)
§ 476-a
§ 476-b
§ 476-c
§ 478
§ 479
§ 485
§ 488
§ 489
§ 491
§ 495
§ 750(B).

Rules of the Four Appellate Divisions of the Supreme Court:

| | |
|---|---|
| First Department: | § 603.2, § 603.6 and § 603.18 |
| Second Department: | § 691.2 and § 691.15 |
| Third Department: | § 800.28 |
| Fourth Department: | § 1022.17 and § 1022.20. |

50. Plaintiff further alleges that defendants Supreme Court, Appellate Division, First Department and Supreme Court, Appellate Division, Second Department are acting illegally and in violation of § 1983 of the Civil Rights Act (42 U.S.C. § 1983) by their enforcement of the Disciplinary Rules, court rules and provisions of the New York Judiciary Law listed in ¶¶ 45-B and 49 above.

51. Defendant Attorney General of New York State is acting illegally and in violation of § 1983 of the Civil Rights Act (42 U.S.C. § 1983) by his enforcement of the provisions of the New York Judiciary Law listed in ¶ 49 above.

52. Plaintiff and his clients have suffered damages amounting to many millions of dollars, at a minimum, as a result of the illegal enforcement

of the Disciplinary Rules, court rules and provisions of the New York Judiciary Law by each of the defendants herein, which has prevented plaintiff and his clients from obtaining financing for antitrust litigation and from using expert witnesses on a contingent-fee basis. Plaintiff seeks no damages as to this count 2 or award for legal fees.

COUNT 3

(Action for a Declaratory Judgment)

Jurisdiction

53. Plaintiff repeats and realleges ¶ 47 of this amended complaint as the basis for jurisdiction of this court to hear count 3 of this amended complaint.

54. This is an action for a declaratory judgment pursuant to 28 U.S.C. § 2201, for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears.

55. Plaintiff repeats and realleges each of the allegations contained in ¶¶ 1-46 and 48-52 above.

PRAYER

WHEREFORE, plaintiff prays:

1. That the herein alleged conspiracy or combination in restraint of trade among defendant The Association of the Bar of the City of New York and Co-Conspirators be adjudged and decreed to be in violation of § 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

2. That the activities of defendants The Association of the Bar of the City of New York; Supreme Court, Appellate Division, First Department; Supreme Court, Appellate Division, Second Department; and Attorney General of New York State be adjudged and decreed to be in violation of § 1983 of the Civil Rights Act (42 U.S.C. § 1983).

3. That the Disciplinary Rules, court rules and provisions of the New York Judiciary Law listed in ¶¶ 45-B and 49 above be declared repugnant to the United States Constitution and Amendments thereto, to the extent they purport to prohibit plaintiff and his clients from offering and selling their respective interests in antitrust claims to public or private investors for the purpose of obtaining financing of out-of-pocket expenses for the antitrust litigation and prohibit the use of expert witnesses in such litigation on a contingent-fee basis.

4. That each of the defendants, their respective agents, attorneys, officials and employees and all persons combining with or acting in concert with any of the defendants or under their direction be permanently restrained and enjoined from prohibiting plaintiff and his clients from offering and selling their respective interests in antitrust claims to public or private investors for the purpose of obtaining financing of out-of-pocket expenses for the antitrust litigation or from retaining or using expert witnesses in such litigation on a contingent-fee basis, and from enforcing any Disciplinary Rules, court rules or statutes which purport to prohibit any such activities.

5. That the amount of damages plaintiff has sustained by reason of the unlawful acts of defendant The Association of the Bar of the City of New York as to count 1 of this amended complaint be assessed in an amount equal to the minimum amount required to qualify for a trial by jury, and defendant The Association of the Bar of the City of New York be ordered to pay plaintiff the amount of such damages.

6. That a judgment be granted against each of the defendants under 28 U.S.C. § 2201 declaring that DR 7-109C is discriminatory, invalid and unenforceable.

7. That plaintiff have such other and further relief as this court may deem just and equitable.

Jury Demand

PLEASE TAKE NOTICE that plaintiff DEMANDS A TRIAL BY JURY as to count 1 of this amended complaint, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable by right by a jury.

Dated: New York, New York
July 4, 1976

Carl E. Person

Carl E. Person, pro se

Office & P.O. Address:
132 Nassau Street
New York, New York 10038

Tel. (212) 349-4616

COMMITTEE ON GRIEVANCES
OF
THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
36 WEST 44TH STREET
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ASSISTANT COUNSEL

ROOM 914

AREA CODE 212
MURRAY HILL 2-0606

May 20, 1975

Carl E. Person, Esq.
132 Nassau Street
New York, New York 10038

Re: Inquiry Concerning Paul, Weiss, Rifkind, Wharton & Garrison, Esqs.
Lewis A. Kaplan, Esq., Sidney S. Rosdeitch Esq.

Dear Mr. Person:

In response to your inquiry of April 7, 1975, please be advised that the Grievance Committee is authorized to handle such grievances, however, no action would be taken during the pendancy of litigation, whether or not the grievance pertains to matters which are the subject of litigation.

Please be advised that in view of this situation, we will close our file, subject to correspondence from you actually filing a grievance, following the termination of the litigation currently pending.

Very truly yours,

JOHN G. BONOMI
Chief Counsel

By William A. Primerano
William A. Primerano
Assistant Counsel

WAP:SM

Exhibit 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

| | | |
|---|---|---|
| CARL E. PERSON, | : | 75 C 1473 (TCP) |
| Plaintiff, | : | PLAINTIFF'S AFFIDAVIT |
| -against- | : | |
| THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, | : | |
| APPELLATE DIVISION, FIRST DEPARTMENT, SUPREME COURT, | : | |
| APPELLATE DIVISION, SECOND DEPARTMENT, SUPREME COURT, and | : | |
| ATTORNEY GENERAL OF NEW YORK STATE, | : | |
| Defendants. | : | |

----------x

STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK)

Carl E. Person, being duly sworn, deposes and says:

1. I am the plaintiff in this action, am fully familiar with all the facts and all prior proceedings herein, and make this affidavit (i) in opposition to the motions by defendant The Association of the Bar of the City of New York ("Bar Association") to vacate plaintiff's Notice of Deposition, dated November 17, 1975 and by witness Business Roundtable to quash the subpoena duces tecum served by plaintiff on Business Roundtable; and (ii) in support of plaintiff's cross-motion for an order granting leave for plaintiff to amend his complaint to include Business Roundtable as a defendant and to made certain other amendments, as contained in Schedule 1 annexed hereto (consisting of pages 1, 2, 4, 6, 10, 15, 16, 19, 20, 22 and 23 of the complaint, marked to show the proposed amendments).

Exhibit 4

2. Count 1 of the complaint alleges a "continuing unlawful combination or conspiracy unreasonably to restrain or monopolize trade and commerce (i) in the rendering and financing of legal and paralegal services for persons with antitrust claims or litigation arising under the nation's antitrust laws; and (ii) in other industries involving high concentrations of economic power through the scheme of making legal and paralegal services unavailable to smaller businesses and new entrants in the industries, in violation of § 1 of the Sherman Antitrust Act". (¶ 44, at p. 16.)

3. The complaint alleges that the co-conspirators include "clients of any of the attorneys described in the preceding subparagraph (g) who give encouragement to the attorneys in their efforts to prevent the activities described in subparagraph (e) above for the purpose of making it more difficult if not impossible for small businesses to enforce any of their antitrust claims against any of these clients". (¶ 9-g, at p. 3.)

4. Witness Business Roundtable is an organization with a membership of 158 major corporations (see clipping from page 1 of The New York Times of November 16, 1975, a copy of which is annexed hereto as Exhibit A). A list of the members of Business Roundtable and the members of its "Policy Committee" is set forth as Exhibit B hereto (consisting of pages 613-617 of Part 2- Appendix for the Hearings before the Subcommittee on Antitrust and Monopoly, 94th Congress, 1st Session, May-June, 1975).

5. In count 2 of my complaint, I seek to have this court declare unconstitutional various provisions of the New York Judiciary Law, New York court rules and disciplinary rules of defendant Bar Association, to the extent they purport to prohibit my clients and me from offering and selling our

respective interests in the clients' antitrust claims to public or private investors to obtain financing of out-of-pocket expenses for the antitrust litigation. Also, I claim that the disciplinary rule prohibiting use of expert winesses in such litigation on a contingent-fee basis is unconstitutional. The constitutional arguments are made in the accompanying memorandum of law.

Concentration of Wealth

6. The concentration of wealth in this country is steadily increasing, and is already at a dangerously high level. Senator Philip A. Hart, Chairman of the Senate Subcommittee on Antitrust and Monopoly (and an expert in economics, politics and government) states that:

> "simplification is necessary if we are to deal effectively with our pressing problems, whether they be inflation, collective frustration or the balance of payments. For a common aspect to all of these problems is the impact of monopoly, economic concentration and competition and the degree to which they exist in today's America.
>
> "What we are talking about is the price we pay for everything from homes to safety pins; the quality of products and service for everything from TV sets to auto repairs; the frustrations we face in dealing with an impenetrable 'establishment.' And if, as I believe, a direct correlation exists between economic and political power, we are talking about the very existence and control of our democratic institutions.
>
> "* * * ...(T)here ... (must be) public understanding of the role that antitrust policy -- designed to control monopoly and concentration and to insure competition -- must play if we are to have any success in dealing with these critical issues. In the past few decades the complexity has made public understanding difficult.
>
> "* * * Antitrust developed as a peculiarly American response to such power, in particular, the obvious and flagrant abuses of economic power which occurred in the late 1800's.
>
> "* * * (T)oday monopoly and its related effects are more complex and refined; they are more subtle and difficult to discern. They are also more dangerous and far-reaching. Unfortunately as the Populist movement lost its vigor, a void developed and the nation became lethargic and unconcerned about the 'new monopoly' and the 'new monopolist.'
>
> "However, in the past few years different -- although quieter -- voices have been questioning the impact of such concentration on a democratic and free enterprise society. They are alarmed

at the rapid momentum responsible for concentration of our national assets in a few hands --a handful answerable only to themselves. They are distressed at venerable liberal statesmen popularizing the view that new technology makes economic concentration inevitable in the face of the clear evidence that it should be taking us down the road to more competition and less concentration.

"* * * (These are) ... our most vital national problems." (Preface to A Primer on Monopoly and Competition, by Willard F. Mueller (New York: Random House, 1970)

7. I have economists and political scientists willing to testify as expert witnesses in this action that economic concentration is so great that our republican form of government in the states is materially threatened by the resulting transfer of governmental power to the largest corporations.

8. The May, 1975 edition of Fortune Magazine reports that the "Fortune 500" companies (the 500 "largest" industrial companies) have a net worth of $309,507,418,000 ($309 billion) and aggregate annual net income of $44 billion. Approximately 50% of this net worth ($146 billion) is owned by the 113 industrial companies from the "Fortune 500" which are members of the Business Roundtable. This is inheard of economic concentration. (The remaining 45 members of the 158-member Business Roundtable are non-industrials, such as utilities.)

9. The free-enterprise system has been giving way to increased concentration (and abuse) of wealth and the means of production. Opportunities for raising capital to finance new businesses have also declined, together with the opportunities for persons without capital to participate in the "free-enterprise" system. The flow of capital into new businesses in competition with he flow of capital into established businesses is regulated to a considerable extent through the National Association of Securities Dealers, Inc., which is a quasi-governmental organization dominated by investment

agents or representatives of the major corporations in this country. Personnel of the Securities and Exchange Commission fail to give small businesses an equal opportunity to obtain capital in competition with major corporations, and such SEC personnel (who often seek employment with major corporations or law firms representing major corporations) tend to apply the securities acts in favor of the major corporations, at the expense and to the detriment of smaller companies.

10. The economic phenomenon now extant — of substantial increases in prices during a period of substantial decreases in demand for products and services — results to a great extent from monopolistic forces in violation of various antitrust laws. These violations are beyond the capacity of the appropriate government officials to correct, because of the power of the major corporations resulting from their ownership of a large percentage of the nation's business assets.

Plaintiff's Problems

11. I have spent the past 5-1/2 years in major antitrust litigation (the Nabcor Action) on behalf of persons who, in my own professional opinion, were substantially injured as a direct result of substantial and repeated violations of the antitrust laws. My experience has proven to me that without outside financing, the plaintiffs in such antitrust actions have little or no overall impact as a deterrent to antitrust violators, and such plaintiffs are prevented by the lack of money (caused by the violations) from obtaining any meaningful recovery. Any recovery would be too small and too late to give any meaningful redress. Accordingly, by stifling antitrust plaintiffs through expensive litigation which they cannot afford, because of the violations, the national policy of private antitrust law enforcement is

virtually meaningless. This action has been brought by me to make private enforcement of the antitrust laws more effective, by giving private antitrust plaintiffs an opportunity to obtain capital on a competitive basis to enforce their alleged antitrust claims. Through my antitrust litigation (such as in the Nabcor Action and this action) I consider that I am expressing myself politically on issues of the utmost concern to the nation, and as such that I am entitled to the First Amendment freedoms associated with political activity.

12. The lack of sufficient funds to pursue the Nabcor Action has resulted in many problems for plaintiff and his clients, such as requiring the disbanding of the Nabcor discount car business, thereby preventing Nabcor from keeping key witnesses in continued assembly. Instead, most of the witnesses have left Nabcor (except the founders) and some of them have taken positions with franchisees of General Motors or Ford and, accordingly, are not interested in testifying. The lack of funds has also prevented Nabcor from keeping its records together, thereby preventing Nabcor from proving the full extent of its damages. Through non-payment of rent and insufficient funds to preserve or ransome vast quantities of records, Nabcor had to part with control of material financial and other records. Also, Nabcor has insufficient funds to hire needed expert witnesses (including accounting firms, economists and franchise experts) or to pay the expenses for witnesses to come to trial to testify. Nabcor would not be able to pay an estimated $100,000 to purchase a transcript of the anticipated 2-3 month trial, if the event it obtained an adverse judgment in the trial court. The founders of Nabcor are unable to devote substantial time to marshalling evidence and locating witnesses because of their need to obtain employment to pay for basic necessities of life. Also, the lack of funds has prevented Nabcor from making needed appeals (such as from the denial of a preliminary injunction motion). Thus, the lack of funds has

prevented plaintiff and his clients in the Nabcor Action from obtaining meaningful access to the courts and has thereby prevented them from expressing themselves politically in this area of utmost important to them and the country. This lack of funds has in fact prevented plaintiff and his clients from exercising their First Amendment freedom of speech and assembly, and has prevented them from obtaining (through discovery and investigations) the information needed relating to the alleged conspiracy and monopoly, thereby preventing such information from being made available to the public as well.

Business Roundtable

13. Even though many antitrust plaintiffs and their counsel are effectively prevented from enforcing their claims, the opportunities for major companies to prevent antitrust enforcement and stronger antitrust legislation are not similarly curtailed. The largest 158 corporations and their respective Presidents have formed an organization called Business Roundtable, located at 888 17th Street, N.W., Washington, D.C. (See Exhibit B hereto for a list as of June 16, 1975 of members of the Business Roundtable, a list which was to be treated with the "utmost confidentiality" according to Executive Director John Post, until it was published against the wishes of the Business Roundtable at pp. 613-617 of the Hearings on the Antitrust Improvements Act of 1975 before the Senate Judiciary Committee's Subcommittee on Antitrust and Monopoly, 94th Congress, 1st Session, during May 7 and 8, June 3, 4, and 12, 1975. Page 614 states that Roger M. Blough, Esq. of Messrs. White & Case (counsel to the Bar Association in this action) is the counsel to Business Roundtable. *

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* Page 258 of the 1971 Year Book of defendant Bar Association shows that Messrs. White & Case contributed (as of July 1, 1971) $25,000 or more to defendant Bar Association. Only 29 other law firms in the country, according to the Year Book, made a similar contribution. Also, the late Orison S. Marden, Esq., a member of White & Case, was president of the Bar Association (1960-2), NYS (1964-5) and ABA (1966-7). p. 767-8B, Martindale's.

14. The existence of the Business Roundtable became known to the general public through a recent front-page article in the New York Times on Sunday, November 16, 1975 (a copy of which is annexed hereto as Exhibit A). Ace reporter Eileen Shanahan of The New York Times reported in part as follows:

"ANTITRUST BILL STOPPED BY A BUSINESS LOBBY

"Top Executives United in New Group to Block Plan for Suing a Company

"Washington, Nov. 15 — A carefully organized lobbying effort, chiefly directed by a little-known organization whose members are all giant corporations, has succeeded in killing a proposed major amendment to the antitrust laws. Similar efforts against other legislation are in process and planned. ***

"The Business Roundtable has an annual budget of 'around $1.5 million,' according to its executive director, John Post, although most expenses of its lobbying campaigns are borne by the individual companies who send their executives to Washington to talk to members of Congress.

"The money to run the Roundtable comes from the corporate members' dues, which range from $2,500 to $35,000 a year,* depending on the size of the company, according to Mr. Post.

"The legislation killed 10 days ago by the lobbying of Business Roundtable members, together with the efforts of a few non-member corporations, would have given the attorneys general of the 50 states authority to sue violators of antitrust law on behalf of their state and to collect money damages. * * *

"An unusual aspect of the Roundtable's successful lobbying against this bill is that the measure was killed in the House Rules Committee, after its corporate opponents had succeeded in having the measure amended, but not in stopping it, in the House Judiciary Committee.

"Aware of Business Lobby

"Members of the Rules Committee on both sides of the issue agree that it was business lobbying that killed the bill and they also say they were aware of the Business Roundtable as the major orchestrator of the lobbying.

"'The Business Roundtable, that's the name I keep hearing,' said Richard Bolling, Democrat of Missouri, one of the three members of the 16-man Rules Committee.... * * *

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* GM, as the 1st or 2nd largest member of the Business Roundtable, presumably is the 1st or 2nd largest contributor.

"Mr. Bolling said he had been approached on the legislation by representatives of four or five corporations, among them General Motors Corporation.... (Emphasis supplied.)

* * *

"Another lobbyist whose name was mentioned by many Rules Committee members was Arnold M. Pickering, one of the largest and best-known firms.

"Mr. Lerman has confirmed that he was retained by the Business Roundtable to work for defeat of the antitrust bill. * * *

"Mr. Lerman also said that he had called a number of chief counsels of companies that are Roundtable members 'and told them there was a very serious problem and they ought to be concerned and doing something about it.'

"Lawyers Did Main Work

"These 'house counsels' — lawyers who are on the payrolls of Business Roundtable companies — carried the main burden of the successful effort to defeat the antitrust bill, according to Mr. Post. * * *

"Ordinarily, it is the corporate presidents or board chairmen who lobby for the Business Roundtable lobbying, Mr. Post said.... * * *

"The businesses that fought the legislation principally argued that, if it were enacted, politically ambitious state attorneys general would file lawsuits that could cost companies millions — in some cases, so much money that the company might have to go out of business. * * *

"Advocates of the legislation argued that only the fear of potentially large damage awards would provide an effective deterrent to various types of illegal collusion among businesses.

"The lobbying effort on this antitrust bill was organized within the Roundtable by an antitrust group that was created early this year. It is headed by Robert S. Hatfield, chairman of the board of Continental Can Company, Inc.

"Businessmen 'Concerned'

"Mr. Post said that the special antitrust group had been set up because Roundtable members 'were getting concerned about the attacks on "economic concentration."'

"This is the phrase used by those who feel that too few corporations control too much of the production in a given industry or the economy as a whole.

"Members of the Roundtable, according to Mr. Post, are concerned about a large number of proposals for amending the antitrust laws that are pending before the Senate Antitrust Subcommittee and they are already working to modify or defeat them.

"He said the business executives were also concerned ... about investigations by the Federal Trade Commission into alleged excessive 'concentration' of economic power in a number of industries.

"'The whole theme of the Business Roundtable is to get the chief executive of the companies involved,' Mr. Post said.

"Thus, when the recent antitrust bill came to Mr. Post's attention, while it was still in the Judiciary Committee, he told every member of the Roundtable about the bill, its probable dangers, and the desirability of a lobbying effort against it.

"Mr. Lerman said that he thought the great value of the Business Roundtable was that 'it provides a way by which the company executives can exchange information and views and communicate throughout the business community in a broader way than they have before.' * * *

"Mr. Post was responsive to most questions about the Roundtable's activities, but was reluctant to say what legislation outside the antitrust area the organization might now be involved in. When pressed, he did say that he thought the Roundtable had helped to reduce the vote by which Congress recently passed legislation creating a Consumer Protection Agency. The victory margin was narrow enough to make it unlikely that the bill could be passed over President Ford's expected veto. * * *

"In addition to its legislative activities, the Business Roundtable also finances litigation on behalf of small and middle-sized companies, when the Roundtable thinks the litigation has potential importance to other companies, Mr. Post said."

## The Relevance of Business Roundtable Activities

15. The above-described activities of Business Roundtable are extremely relevant in this action for various reasons, including the following:

(a) The problem of plaintiff and his clients theoretically could be cured by legislative relief (to provide some type of mandatory financing or regulatory assistance), but any

such legislative relief would be political and, therefore, could not be obtained through judicial intervention; and the activities of Business Roundtable could be expected to prevent the passage of any remedial legislative proposals;

(b) Under the federal and state antitrust laws, any assistance to private persons with antitrust claims cannot be obtained as a matter of right. Enforcement of these laws by the Justice Department, Federal Trade Commission and appropriate State authorities (such as defendant Attorney General of New York State) is purely discretionary, which discretion is often exercised on a political basis. None of these agencies provided any meaningful relief to plaintiff or his clients after repeated requests for relief, even though the Justice Department advised my clients they had enough to establish civil liability; after several years we are still waiting for the New York State Attorney General to respond. Donald I. Baker, Chief, Evaluation Section, Antitrust Division, Department of Justice, during his June 6, 1969 address on "The Role of Private Actions in Antitrust Enforcement" before the Institute of Continuing Legal Education, University of Michigan, said:

> "The Antitrust Division has limited resources to meets its sweeping responsibility in a growing economy. We need help.
>
> "The Government's perspective is necessarily different from that of any 'private attorney general'. We are charged with the responsibility of enforcing the antitrust law and promoting competition across the broad range of the economy. Our role is not only to bring lawsuits, but to persuade private industry to act voluntarily in a procompetitive manner. This makes it particularly important that we select cases and utilize theories designed to promote competition. * * *

"The private plaintiff must necessarily be concerned principally with his own situation. The plaintiff's lawyer is an advocate entitled to argue any theory which he thinks will win the case — regardless of whether it is likely to be procompetitive in its broader application. The plaintiff's own financial loss must be the major consideration in deciding to bring suit. * * * In sum, the private plaintiff's approach to antitrust enforcement is likely to be quite different from the Government's in many areas. In diversity, one hopes for strength.

"The private action makes at least two basic contributions to over-all antitrust enforcement. First, it provides a strong financial deterrent to horizontal price fixing and other hard-core per se offenses. Secondly, private actions have provided a direct form of relief for many largely private types of disputes where the government agencies have not acted.... * * *

"The availability of this effective private remedy against price fixing is extremely important to over-all antitrust enforcement. Price fixing is a continuing danager and it can have very serious economic effects. Measured in these terms, the Government's remedies are modest at best. * * *

"* * * To summarize, the Antitrust Division will no doubt continue to spend a very substantial proportion of its resources on suspected price fixing, but we shall have to continue to look to the private plaintiff for an additional strong deterrent.

"I mentioned a second important aspect of private antitrust enforcement: it offers relief where the Government will not or cannot take action. This situation often reflects the shortage of available Government enforcement resources. Thus, we are often obliged to leave largely private disputes to the parties themselves — for example, in the fields of franchising and distribution. * * * ...we should benefit from the Supreme Court's 1968 Perma Life Muffler decision. ... said the Court, 'the purposes of the antitrust laws are best served by insuring that the private action will be an ever-present threat to deter anyone contemplating behavior in violation of the antitrust laws.' * * *

"* * * We do, from time to time, write amicus briefs in private cases involving important questions of antitrust policy. Normally, this is done only in the Supreme Court, and the activity is under the control of the Solicitor General.

(Footnote: "The Government has not participated as an amicus in lower court proceedings for a variety of reasons — including limitations on available resources.")

Lee Loevinger, former Assistant Attorney General in Charge of the Antitrust Division wrote in a law review article, "Private Action — The Strongest Pillar of Antitrust", Vol. 111, No. 2 Antitrust Bulletin Mar.-Apr. 1968:

"But I should like to urge ... upon the Congress ... the great importance of careful and competent study of this entire field. I submit that the problems with which the antitrust laws are concerned -- the problems of the distribution of power within society — are second only to the questions of survival in the face of threats of nuclear weapons in importance for our generation.

* * *

"As between enforcement by government agencies and by private parties, there are a number of reasons to believe that action by private parties is both more desirable and more effective. First, private action automatically puts a host of interested and well informed persons in the enforcement force. It would take a vast bureaucratic army of government agents to begin to equal the effectiveness of interested private parties in policing the antitrust laws. One former Assistant Attorney General in charge of the Antitrust Division testified that lacking the enforcement aid of private suits the division would require an appropriation of at least four times as great as it normally receives in order to achieve equal enforcement. My own guess is that even a quadruple appropriation for the Antitrust Division would not equal the enforcement effectiveness of private action. * * *

"Second, and perhaps most important, the burden of antitrust litigation is so great that private parties are often unable or unwilling to undertake such lawsuits regardless of the violations involved or the injuries suffered. Congress and the country have heard many articulate spokesman for antitrust defendants complain because of the heavy burden of defending an antitrust prosecution, because of the mass of evidence involved, the length of trial, the complexity of the issues, and the time required

of the businessmen involved. But it should be apparent that this burden is even greater for a plaintiff in such a case than for the defendant. It is greater for the plaintiff because the plaintiff has the burden of proof, the burden of discovering and presenting evidence — and evidence which is usually in the possession of the defendants — and the burden of initiating and going forward with the case which the defendant is later called upon to answer. When the plaintiff is the government, this burden is an obstacle only within the limits of the current departmental budget. But when the plaintiff is a private party the situation is quite different. As a practical matter, a business victim of antitrust violation cannot undertake any action for vindication of his rights unless he is willing and able to wait at least two or three years — and often longer — for the decision of his case, is able to advance at least several thousand dollars in probable costs of preparing and presenting his case, and is prepared to withstand the social and economic pressures and the threat of reprisal and retaliation that not infrequently are the lot of the antitrust plaintiff.

" * * * ...the Supreme Court has recognized that Congress sought to favor the private antitrust litigant. Nevertheless, many courts have an attitude of definite hostility to private antitrust suits; and the decisions are stricter in their interpretation of the laws and more rigorous in this requirements of proof in private suits than in government actions under the antitrust laws.

" * * * The necessity of utilizing the discovery procedures to secure evidence and the necessity to be prepared to meet the defensive use of such procedures if employed to create financial hurdles for the plaintiff require that a small business victim of antitrust violation have at least several thousand dollars available for out-of-pocket expenses — not including legal fees — before undertaking private legal action. * * *

"Reference is sometimes made to the possibility of abuse of the right of private action under the antitrust laws. * * * However, in the antitrust field, the obstacles to private action are so great, the legal skill and effort required for successful prosecution of an action is so demanding, and the defenses ordinarily available to defendants are so formidable that the possibility of abuses of the right of action or of unjustified suits is reduced to a minimum. In this connection it should be pointed

out that plaintiffs have ultimately prevailed in only a minority of the cases filed and in an astonishly small number of total cases under the antitrust laws. However, an examination of the cases convinces me that this is due more to the difficulty of obtaining evidence and the attitude of the courts than it is to the groundless filing of claims without merit. In any event, the actual record of the courts in this field proves that an antitrust defendant need have little fear of unjustified recovery against him.

"If, as has been suggested, private action is the most important pillar of antitrust enforcement but the difficulties and obstacles of such action seriously handicap a small business victim of predatory practices from obtaining relief, the question arises: What could Congress do to aid small business in securing effective remedies against antitrust violations? * * *

"* * * ....it is paradoxical that at the present time suits prosecuted by the government largely on the basis of illegal injury to small private business are often disposed of without hearing or considering the viewpoint of the business victims. Further even when protective decrees are entered for the benefit of such small business victims, they are dependent upon the favor or the resources of the Department of Justice to see that the decrees are enforced, and under prevailing law are unable to ask the court directly for enforcement of the decrees for their own protection. Too often, the government is busy with new suits, is limited in its resources, or regards its mission as the accomplishment of broader objectives than the protection of a single injured small business, and so the decrees simply are not enforced and do not achieve their purpose. * * *

"Twelfth, the right to recover treble damages for injuries suffered as the result of antitrust violations should be preserved against all attempts to weaken or amend it. This right has been inherited from the common law, antedating even our Constitution. * * *

"* * * ...I respectfully submit ~~that this~~ subject matter is one of great national importance...."

(c) Private enforcement of the antitrust laws is a victim's means not only of obtaining recovery, but of acting as a private attorney general and assisting in a political act of determining how the wealth of the country is to be allocated. This is a substantial and effective means of political expression for plaintiff and his clients with antitrust claims.

(d) Plaintiff is attorney for his clients in an antitrust action (the Nabcor Action) brought against 63 named defendants, including General Motors Corporation, General Motors Acceptance Corporation, Ford Motor Company, Chrysler Corporation and First National City Bank. Each of these defendants is a member of the Business Roundtable (GMAC as a subsidiary of GM). Also named as defendants in the Nabcor Action are James M. Roche, former President and Board Chairman of GM; Frederic G. Donner, former President and Board Chairman of GM; Semon E. Knudsen, former official of GM; Henry Ford, II and Lee Iacocca, President of Ford Motor Company. The activities of these corporate defendants (and their officials) through the Business Roundtable may be considered "political", including their attempts to defeat antitrust actions brought against them or other major corporations. In fact, the Business Roundtable is even financing the defense of actions against non-members deemed of major importance to the 158 members. It can be assumed that this includes the defense of antitrust actions, because of the primary interest of the Business Roundtable in preventing enactment of remedial antitrust legislation; also, GM (acting on behalf of the other Nabcor defendants, including

other members of the Business Roundtable) is engaging in excessive litigation practices which, if such practices are used repeatedly in other antitrust litigation involving GM or its counsel, could be considered illegal under the Supreme Court's decision in California Motor Transport v. Trucking Unlimited, 404 U.S. 508 (1972) - see pp. 20-23 of the accompanying memorandum of law. Accordingly, the activities of the Business Roundtable and its 158 members with respect to the defeat of antitrust legislation and enforcement is considered by Business Roundtable to be political activity, protected by the 1st Amendment, arguably, as a means of political expression for the 158 corporate members and their respective Presidents.

(e) These 158 corporations have assets well exceeding 50% of the net assets of the 500 largest industrial companies in the United States (the "Fortune 500"), which can be determined by comparing the $310,000,000,000 ($310 billion) in net assets of the Fortune 500 (p. 228 of Fortune Magazine, May, 1975) with the $146 billion in net worth of only 113 of the 158 corporations (the others are not industrial companies). The Business Roundtable and its members have, realistically, unlimited amounts of money (amounting to billions of dollars) through their pooling of money, legal and other resources to exercise their own form of political expression, by defeating antitrust legislation and litigation against non-members. Thus, these 158 corporations are using unlimited amounts of money and business assets in exercise of their alleged political rights (freedom of speech and freedom of assembly) and in promoting state action (according

to plaintiff's complaint herein) to restrict plaintiff and his clients from exercising their similar rights to obtain greater enforcement of the antitrust laws through favorable judicial precedents and monetary judgments.

(f) On the other hand, plaintiff and his clients are prevented by the state action of which plaintiff complains, and the conspiracy to restrain trade (count 1), from alienating their own property interests in the antitrust claims to the extent the proceeds would be used to exercise this means of political expression by them. The result, plaintiff alleges, is a denial of due process, a denial of equal protection, a denial of the right to freedom of speech and the right to assembly, a denial of the right to petition the courts and agencies of government for a redress of grievances, and an abridgment of privileges and immunities, among other rights. In fact, plaintiff apparently cannot even reduce his 35% contingent-fee interest in the Nabcor Action by sale to a third party when the proceeds are to be used solely to cover out-of-pocket expenses incurred by the clients, even though the clients under some instances would be legally able to do so. This results from the statute prohibiting plaintiff from "splitting fees" with a layman.

16. The documents sought by plaintiff through the subpoena duces tecum served on Business Roundtable are relevant for the following reasons:

Request No. 1. Documents reflecting the organization and capitalization of Business Roundtable would tend to identify the persons who are part of the alleged conspiracy, the scope of the alleged conspiracy and

the amount of money and other resources available to defeat antitrust legislation and litigation by unlawful interference and excessive activities intended to achieve an illegal end result of denying plaintiff, his clients and others from meaningful access to the courts and agencies.

Request No. 2. List of all members of Business Roundtable would indicate the resources available to the members of the conspiracy and the identities of the members of the conspiracy.

Request No. 3. Documents reflecting receipt of income or property, which would show whether the Business Roundtable has any financial interest in actions the defense of which is financed by it and any persons who have an interest in the activities of the Business Roundtable other than by full membership; also, it would tend to show the basis upon which contributions were made.

Request No. 4. Document reflecting lobbying activity relating to antitrust bills would show the extent to which this group has engaged in political activity or excessive political activity relating to the antitrust field, and would tend to support plaintiff's view that activities in the field of antitrust are truly political, as well as the amount of money and effort spent.

Request No. 5. Documents reflecting expenses for the lobbying activities described in the preceding request would show the amount of money the Business Roundtable has spent in its political efforts, and would invite comparison to the amount of money available to plaintiff and his clients with respect to the same political activity, to provide a measure for what may be considered "excessive" under the California Motor Transport decision.

Request No. 6. Records showing campaign contributions or assistance would show the extent to which the Business Roundtable or its members have used their organization to bring combined political and economic

pressure upon candidates for office, for the purpose of obtaining their desired legislative action with respect to any proposed antitrust legislation, which would support plaintiff's claim of excessive lobbying activities, with an illegal end result.

Request No. 7. Records relating to the cost of defending or prosecuting antitrust litigation would show the difficulties which prevent the typical antitrust victim from obtaining justice, more so when the activities of the Business Roundtable and its members in financing the defense of litigation are added to such difficulties.

Request No. 8. Minutes or notes of Business Roundtable meetings relating to antitrust bills or proposals would tend to show the purpose of the Business Roundtable in opposing legislation and the means by which the opposition is mounted. The means themselves may be illegal, at least when they are excessive, and certainly would involve unregulated costs which should be compared with the plaintiff's inability to alienate his own property (the percentage of his clients' antitrust claims) to obtain the same type of lobbying efforts. Also, this would help plaintiff in demonstrating his need for the First Amendment freedoms, in comparison to any state interest in the state action about which plaintiff complains.

Request No. 9. documents relating to any financing of the defense or prosecution of any antitrust litigation by the Business Roundtable or any of its members would show the futility of plaintiff's efforts in bringing antitrust actions against large companies when the defense is to be financed by Business Roundtable, or any of its members (as is alleged to be occurring in the Nabcor Action) thereby effectively barring plaintiff

and his clients from meaningful access to the courts, from obtaining a redress of greivances, and from exercising their political right to bring meritorious antitrust suits.

Request No. 10. Documents relating to plaintiff, his Nabcor clients, and persons interested in providing financing to the plaintiff and Nabcor plaintiffs would show the extent to which a conspiracy exists in preventing plaintiff and his clients from obtaining relief in the courts, and at the same time in preventing plaintiff and his clients from obtaining the money needed to finance the Nabcor action properly. (Annexed as Exhibit C hereto is a copy of a letter from Gannett Publications, a wholly-owned subsidiary of which is a defendant in the Nabcor Action) to Public Equity Corporation in a brazen attempt to interfere with the proposed financing of the Nabcor Action. GM's counsel told plaintiff he was aware of the article in Automotive News and presumably he sent a copy of the article to Gannett, with instructions to contact President Thomas B. Mechling, in furtherance of the conspiracy alleged in plaintiff's complaint herein.)

Request No. 11. Documents relating to actual or threatened attacks on economic concentration by government, plaintiff or others would show the extent to which the activities of the Business Roundtable are political and illegal, and involve an attempt to pool the resources of the largest corporations in the world in a massive combination to defend themselves against government regulation and private antitrust law enforcement, contrary to the intentions of the Congress, courts and U. S. Constitution.

Request No. 12. By-Laws of the Business Roundtable would tend to show the procedures whereby any financing of the defense of antitrust

litigation against non-members is carried out, as well as other purposes of the Business Roundtable.

Request No. 13. Handbooks, memoranda, instruction setting forth position descriptions, operating procedures, purposes and objectives of the Business Roundtable would tend to show how any financing of the defense of antitrust suits against non-members is to be carried out, how much is to be spent, what types of actions are to be so defended, who is to agree on the financing of the defense, and the extent to which the resources of the combination can be utilized by members or non-members, in a gigantic, illegal conspiracy to prevent government and private antitrust litigants from having their day in court.

Request No. 14. Documents relating to the financial ability or inability of any persons with antitrust claims to enforce their rights may well show how much money need be spent by the Business Roundtable to prevent a private litigant from enforcing his rights, and would tend to show how successful the combination can be in comparison to the amount of money or other assets available to the typical antitrust litigant. This would allow the combination to determine how much to assess their members, in order to prevent private plaintiffs from obtaining justice in antitrust litigation.

Request No. 15. Documents relating to the effectiveness of the Justice Department, Federal Trade Commission or any state Attorney General (or similar state official) would have the same purpose as for Request No. 14 above, and may show the extent to which government officials or agencies have been unable or unwilling to enforce the federal and state antitrust laws, as well as the reasons (including any conspiratorial activities) for any such wilful policy of non-feasance.

Request No. 16. Documents relating to the economic or political objectives of the Business Roundtable or any of its members would show that the antitrust field is truly political, and that the objective of the Business Roundtable and its members in trying to obtain non-enforcement of the antitrust laws would be to obtain greater concentration until the 100% level is reached, and only 1 corporation remains.

10. In passing, the affidavit of Daniel M. Cohen, Esq., on behalf of the defendants other than the Bar Association should be disregarded as conclusory and patently erroneous. It claims that plaintiff is harrassing defendants by the detailed discovery sought and the concomitant burdens, financial and otherwise. First of all, this is my first attempt to obtain any discovery in the action, which means that the deposition could not be a "harrassment". Also, I would like to point out that the need for this action would not have existed if the Attorney General had done his job and investigated my written complaints, then taken appropriate action. Instead, I have heard nothing whatever after spending perhaps 100-200 hours in preparing materials for submission to the Attorney General. Looking back, I can see a substantial needless burden and total waste of time and money, which I can honestly say was a harrassment. The time and money would have been much better spent on the Nabcor Action than attempting to obtain any governmental assistance. The truth is that the discovery is of a non-party witness, Business Roundtable, which involves no burdens whatever on any of the defendants (particularly if they are truly convinced that all of the discovery sought by plaintiff would be irrelevant in any event).

Carl E. Person

Carl E. Person

Subscribed and sworn to before me
this 2nd day of December, 1975

MARK ARPOTT
Notary Public, State of New York
No. 30-5118055
Qualified in Nassau County
Commission Expires March 30, 1976

Notary Public

# Antitrust Bill Stopped By a Business Lobby

## Top Executives United in New Group To Block Plan for Suing a Company

By EILEEN SHANAHAN
Special to The New York Times

WASHINGTON, Nov. 15—A carefully organized lobbying effort, chiefly directed by a little-known organization whose members are all giant corporations, has succeeded in killing a proposed major amendment to the antitrust laws. Similar efforts against other legislation are in process and planned.

The organization is the Business Roundtable, whose 158 corporate members range, alphabetically, from the Allis—Chalmers Corporation to Xerox Corporation. Its members include the three largest automobile manufacturers, the three largest banks, seven of the largest oil companies, the largest steel companies, major retailing organizations and many of the largest utilities, including American Telephone and Telegraph Company.

The Business Roundtable has an annual budget of "around $1.5 million," according to its executive director, John Post, although most expenses of its lobbying campaigns are borne by the individual companies who send their executives to Washington to talk to members of Congress.

The money to run the Roundtable comes from the corporate members' dues, which range from $2,500 to $35,000 a year, depending on the size of the company, according to Mr. Post.

The legislation killed 10 days ago by the lobbying of Business Roundtable members, together with the efforts of a few nonmember corporations, would have given the attorneys general of the 50 states authority to sue violators of antitrust law on behalf of the citizens of their state and to collect money damages.

The damages, which could run to many millions of dollars in some cases, would have been three times the amount of any overcharges that had resulted from company actions, such as

Continued on Page 74, Column 3

Exhibit A

New York Times Page 1, Col. 2
November 16, 1975

Continued From Page 1, Col. 2

price-fixing agreements, that had been found to be illegal.

The money would have been paid back to the persons injured by the illegal actions, insofar as they could be identified, and any left-over money would have been kept by the state to use for valid public purposes related to the injury inflicted on the state's citizens.

For example, damages collected from drug companies might have been used to finance public health services.

An unusual aspect of the Roundtable's successful lobbying against this bill is that the measure was killed in the House Rules Committee, after its corporate opponents had succeeded in having the measure amended, but not in stopping it, in the House Judiciary Committee.

### Aware of Business Lobby

Members of the Rules Committee on both sides of the issue agree that it was business lobbying that killed the bill and they also say they were aware of the Business Roundtable as the major orchestrator of the lobbying.

"The Business Roundtable, that's the name I keep hearing," said Richard Bolling, Democrat of Missouri, one of the three members of the 16-man Rules Committee who voted to permit the bill to go before the House of Representatives for a vote. The majority of the committee voted to send the bill back to the Judiciary Committee for further consideration.

Mr. Bolling said he had been approached on the legislation by representatives of four or five corporations, among them, General Motors Corporation and Bristol-Myers Company.

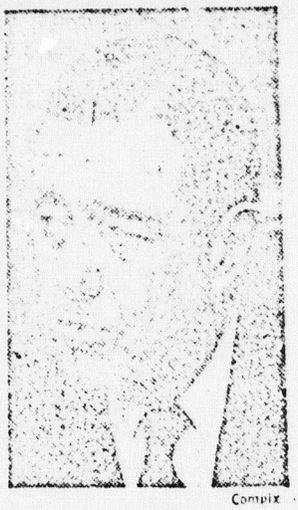
Bristol-Myers, the drug company, is not a member of the Business Roundtable. Its chief lobbyist on the antitrust bill was Philip A. Lacovara, a lawyer now in private practice here. Earlier, as a member of the staff of the Watergate special prosecutor, he argued Nixon v. United States — the case for release of President Nixon's tapes, before the Supreme Court.

Another lobbyist whose name was mentioned by many Rules Committee members was Arnold M. Lerman of Wilmer, Cutler & Pickering, one of the largest and best-known firms.

Mr. Lerman has confirmed that he was retained by the Business Roundtable to work for defeat of the antitrust bill. He said:

"I was kind of an idea guy. I did the legal analysis so the company executives could talk to members of Congress about the problems with the bill."

Mr. Lerman also said that he had called a number of chief counsels of companies that are Roundtable members "and told them there was a very serious problem and they ought to be concerned and doing something about it."



Compix

Robert S. Hatfield, chairman of Continental Can Company, headed business group's lobbying on the antitrust bill.

Associated Press

Philip A. Lacovara lobbied for Bristol-Myers.

### Lawyers Did Main Work

These "house counsels"—lawyers who are on the payrolls of Business Roundtable companies—carried the main burden of the successful effort to defeat the antitrust bill, according to Mr. Post. The reason, he said, was that this legislation was so complex and technical that the corporate chiefs themselves were not well qualified to discuss it with members of Congress.

Ordinarily, it is the corporate presidents or board chairmen who lobby for the Business Roundtable lobbying, Mr. Post said, often bringing with them

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SUN... NOVEMBER 16, 1975

# New Lobby of Leaders of Nation's Major Companies

"a plant manager from the Congressman's area.

"It's much more impressive," he said, "if the plant manager can talk about the jobs that might be lost in the Congressman's own district if a particular piece of legislature goes through."

The businesses that fought the legislation principally argued that, if it were enacted, politically ambitious state attorneys general would file lawsuits that could cost companies millions — in some cases, so much mone that the company might have to go out of business at the same time, it was argued, the individual citizens of a state would eceive economically insignificant sums of money, perhaps less than $1 in many cases.

Many of the detailed provisions of the bill, such as the manner in which the damages were to be established, were also attacked by the business lobbyists.

Advocates of the legislation argued that only the fear of potentially large damage awards would provide an effective deterrent to various types of illegal collusion among businesses.

The lobbying effort on this antitrust bill was organized by an antitrust group of the Business Roundtable, which was created early this year. It is headed by Robert S. Hatfield, chairman of the board of Continetal Can Company, Inc.

### Businessmen 'Concerned'

Mr. Post said that the special antitrust group had been set up because Roundtable members "were getting concerned about the attacks on 'economic concentration.'"

This is the phrase used by those who feel that too few corporations control too much of the production in a given industry or the economy as a whole.

Members of the Roundtable, according to Mr. Post, are concerned about a large number of proposals for amending the antitrust laws that are pending before the Senate Antitrust Subcommittee and they are already working to modify or defeat them.

He said the business executives were also concerned about a recent surge of talk about establishing a national economic planning agency; about presentations now being made to the Council on Wage and Price Stability that allege that some price increases have been unjustified; and about investigations by the Federal Trade Commission into alleged excessive "concentration" of economic power in a number of industries.

"The whole theme of the Business Roundtable is to get the chief executive of the companies involved," Mr. Post said.

This, when the recent antitrust bill came to Mr. Post's attention, while it was still in the judiciary committee, he told every member of the Roundtable about the bill, its probable dangers, and the desirability of a lobbying effort against it.

Mr. Lerman said that he thought the great value of the business roundtable was that "it provides a way by which the company executives can exchange information and views and communicate throughout the business community in a broader way than they have before."

He explained that, previously, executives within an industry generally received alerts through their trade associations about legislation that others in the industry feared might be harmful, but that there had been little communication between different industries.

Mr. Post was responsive to most questions about the Roundtable's activities, but was reluctant to say what legislation outside the antitrust area the organization might now be involved in. When pressed, he did say that he thought the Roundtable had helped to reduce the vote by which Congress recently passed legislation creating a Consumer Protection Agency. The victory margin was narrow enough to make it unlikely that the bill could be passed over President Ford's expected veto.

Mr. Post said the Roundtable had also been involved in the successful effort to get the House Ways and Means Committee to postpone consideration of changes in the tax profits earned overseas by American corporations.

The Roundtable is "somewhat" involved in the effort to get natural gas prices decontrolled and in environmental legislation, he said.

In addition to its legislative activities, the Business Roundtable also finances litigation on behalf of small and middle-sized companies, when the Roundtable thinks the litigation has potential importance to other companies, Mr. Post said.

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THE BUSINESS ROUNDTABLE,
*Washington, D.C., July 18, 1975.*

Hon. PHILIP A. HART,
*Chairman, Subcommittee on Antitrust and Monopoly, Judiciary Committee, Washington, D.C.*

DEAR MR. CHAIRMAN: Enclosed herewith are lists which relate to the membership of The Business Roundtable. This is in response to your request to Arnold Lerman, Esq., when he testified on June 6, 1975, on behalf of The Business Roundtable before your Subcommittee inconnection with S. 1284.

List A contains the names of the members of the Roundtable's Policy Committee as of June 16, 1975; it includes new directors elected on that date. (Our letterhead's list of Policy Committee members is not up-to-date because a new letterhead is in preparation) List B is a list of all the member companies of the Roundtable.

Of course, we have no objection to providing you with these lists. We think you would appreciate knowing, however, that we have always treated List B with utmost confidentiality. We are concerned that it might be used for solicitation by others for funds, memberships and other types of support. Only on rare occasions have we supplied it to a member and then on condition that it be handled as confidential and used only on business of the Roundtable. We trust, therefore, that you will find it unnecessary to publish List B in the record of the hearings, although we recognize that the decision is entirely up to you.

If you have any questions about either or both lists, we would be glad to answer them.

Sincerely yours,

JOHN POST,
*Executive Director.*

[Enclosure.]

*"A" List—June 16, 1975.*

THE BUSINESS ROUNDTABLE

POLICY COMMITTEE

*Chairman*

Mr. John D. Harper, Chairman, Aluminum Co., of America, 1501 Alcoa Building, Pittsburgh, Pa. 15219.

*Cochairman*

Mr. John D. deButts, Chairman, American Telephone & Telegraph Co., 195 Broadway, New York, N.Y. 10007.

*Cochairman*

Mr. Howard J. Morgens, Chairman, Executive Committee, The Procter & Gamble Co., P.O. Box 599, Cincinnati, Ohio 45201.

Mr. William O. Beers, Chairman, Kraftco Corp., Kraftco Court, Glenview, Ill. 60025.

Mr. Frank T. Cary, Chairman, International Business Machines Corp., Old Orchard Road, Armonk, N.Y. 10504.

Mr. Alden W. Clausen, President, Bank of America, Bank of America Center, San Francisco, Calif. 94120.

Mr. E. M. de Windt, Chairman, Eaton Corp., 100 Erieview Plaza, Cleveland, Ohio 44114.

Mr. Charles D. Dickey, Jr., Chairman, Scott Paper Co., Scott Plaza, Philadelphia, Pa. 19113.

Mr. Edward R. Eberle, Chairman, Public Service Electric & Gas Co., 80 Park Place, Newark, N.J. 07101.

Mr. Robert S. Hatfield, Chairman, Continental Can Company Inc., 633 Third Avenue, New York, N.Y. 10017.

Mr. William A. Hewitt, Chairman, Deere & Co., John Deere Road, Moline, Ill. 61265.

Mr. Frederick G. Jaicks, Chairman, Inland Steel Co., 30 West Monroe Street, Chicago, Ill. 60603.

Mr. J. K. Jamieson, Chairman, Exxon Corp., 1251 Avenue of the Americas, New York, N.Y. 10020.

Exhibit B

Mr. Reginald H. Jones, Chairman, General Electric Co., Fairfield, Conn. 06431.

Mr. Robert E. Kirby, Chairman, Westinghouse Electric Corp., Gateway Center, Pittsburgh, Pa. 15222.

Mr. William F. LaPorte, Chairman, American Home Products Corp., 685 Third Avenue, New York, N.Y. 10017.

Mr. Ralph Lazarus, Chairman, Federated Department Stores, Inc., 222 West Seventh Street, Cincinnati, Ohio 45202.

Mr. Ian K. MacGregor, Chairman, AMAX Inc., Amax Center, Greenwich, Conn. 06830.

Mr. Robert H. Malott, Chairman, FMC Corp., 200 East Randolph Drive, Chicago, Ill. 60601.

Mr. C. Peter McColough, Chairman, Xerox Corp., Stamford, Conn. 06904.

Mr. Louis W. Menk, Chairman, Burlington Northern, Inc., 176 East Fifth Street, St. Paul, Minn. 55101.

Mr. Frank R. Milliken, President, Kennecott Copper Corp., 161 East 42nd Street, New York, N.Y. 10017.

Mr. Roger Milliken, President, Deering Milliken, Inc., P.O. Box 3167, Spartanburg, S.C. 29302.

Mr. Thomas A. Murphy, Chairman, General Motors Corp., General Motors Building, Detroit, Mich. 48202.

Mr. David Packard, Chairman, Hewlett-Packard Co., 1501 Page Mill Road, Palo Alto, Calif. 94303.

Mr. Charles J. Pilliod, Jr., Chairman, The Goodyear Tire & Rubber Co., 1144 East Market Street, Akron, Ohio 44316.

Mr. Irving S. Shapiro, Chairman, E. I. du Pont de Nemours & Co., Wilmington, Del. 19898.

Mr. Mark Shepherd, Jr., President, Texas Instruments Inc., P.O. Box 5475 Dallas, Tex. 75222.

Mr. J. Stanford Smith, Chairman, International Paper Co., 220 East 42nd Street, New York, N.Y. 10017.

Mr. Edgar B. Speer, Chairman, United States Steel Corp., 600 Grant Street, Pittsburgh, Pa. 15230.

Mr. George A. Stinson, Chairman, National Steel Corp., Grant Building, Pitt-burgh, Pa. 15219.

Mr. O. Pendleton Thomas, Chairman, The B. F. Goodrich Co. 500 South Main Street, Akron, Ohio 44318.

Mr. W. Reid Thompson, Chairman, Potomac Electric Power Co., 1900 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

Mr. C. C. Tillinghast, Jr., Chairman, Trans World Airlines Inc., 605 Third Avenue, New York, N.Y. 10016.

Mr. Lynn A. Townsend, Chairman, Chrysler Corp. 341 Massachusetts Avenue, Detroit, Mich. 48231.

Mr. Rawleigh Warner, Jr., Chairman, Mobil Oil Corp., 150 East 42nd Street, New York, N.Y. 10017.

Mr. F. Perry Wilson, Chairman Union Carbide Corp., 270 Park Avenue, New York, N.Y. 10017.

Mr. J. Robert Wilson, President Roadway Express Inc., 1077 Gorge Boulevard, Akron, Ohio 44309.

Mr. Arthur M. Wood, Chairman, Sears, Roebuck and Co., Sears Tower—Department 702, Chicago, Ill. 60684.

Mr. Walter B. Wriston, Chairman, First National City Corp., 399 Park Avenue, New York, N.Y. 10022.

*Counsel*

Mr. Roger M. Blough, White & Case, 14 Wall Street, New York, N.Y. 10005.

THE BUSINESS ROUNDTABLE

MEMBERSHIP LIST

*"B" List*

Allis-Chalmers Corp., 1126 South 70th Street, Milwaukee, Wis. 53201.
Aluminum Company of America, Alcoa Building, Pittsburgh, Pa. 15219.
American Can Co., American Lane, Greenwich, Conn. 06830.
American Home Products, 685 Third Avenue, New York, N.Y. 10017.
Amax Inc., Greenwich, Conn. 10017.
ASARCO Inc., 120 Broadway, New York, N.Y. 10005.

American Telephone and Telegraph Co., 195 Broadway, New York, N.Y. 10007.
The Anaconda Co., 25 Broadway, New York, N.Y. 10004.
Arizona Public Service Co., P.O. Box 21666, Phoenix, Ariz. 85036.
Armco Steel Corp., 703 Curtis Street, Middletown, Ohio 45042.
Armstrong Cork Co., Lancaster, Pa. 17604.
Atlantic Richfield Co., 515 South Flower Street, Los Angeles, Calif. 90071.
Babcock and Wilcox, 161 East 42d Street, New York, N.Y. 10017.
Bank of America, Bank of America Center, San Francisco, Calif. 94120.
The Bendix Corp., 10650 Civic Center Drive, Southfield, Mich. 48075.
Bethlehem Steel Corp., 701 East Third Street, Bethlehem, Pa. 18016.
The Boeing Co., P.O. Box 3707, Seattle, Wash. 98124.
Boise Cascade Corp., P.O. Box 200, Boise, Idaho 93701.
Borg-Warner Corp., 200 South Michigan Avenue, Chicago, Ill. 60604.
Burlington Industries, Inc., Box 21207, Greensboro, N.C. 27420.
Burlington Northern, Inc., 176 East 5th Street, St. Paul, Minn. 55101.
Campbell Soup Co., Camden, N.J. 08101.
Carolina Power and Light Co., Raleigh, N.C. 27602.
Carrier Corp., Carrier Tower, Syracuse, N.Y. 13201.
Carter Hawley Hale Stores, Inc., 600 South Spring Street, Los Angeles, Calif. 60014.
Caterpillar Tractor Co., 100 N.E. Adams Street, Peoria, Ill.
Certain-Teed Products Corp., P.O. Box 860, Valley Forge, Pa. 19842.
Champion International Corp., 777 Third Avenue, New York, N.Y. 10017.
Chase Manhattan Bank, 1 Chase Manhattan Plaza, New York, N.Y. 10005.
Chrysler Corp., P.O. Box 1919, Detroit, Mich. 48231.
Cincinnati Gas & Electric Co., 4th & Main Streets, Cincinnati, Ohio 45201.
Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102.
Clark Equipment Co., 324 East Dewey Street, Buchanan, Mich. 49107.
Cleveland-Cliffs Iron Co., Union Commerce Building, Cleveland, Ohio 44101.
Cleveland Electric Illuminating, P.O. Box 5000, Cleveland, Ohio 44101.
The Coca-Cola Co., P.O. Drawer 1734, Atlanta, Ga. 30301.
Columbia Gas System, 20 Montchanin Road, Wilmington, Del. 19807.
Continental Can Co., 633 Third Avenue, New York, N.Y. 10017.
Continental Oil Co., High Ridge Park, Stamford, Conn. 06904.
Corning Glass Works, Corning, N.Y. 14380.
Crown Zellerbach Corp., One Bush Street, San Francisco, Calif. 94104.
Cyclops Corp., 650 Washington Street, Pittsburgh, Pa. 15228.
Dart Industries, Inc., P.O. Box 3157, Terminal Annex, Los Angeles, Calif. 90051.
Dayton Power & Light Co., 25 North Main Street, Dayton, Ohio 45101.
Deere & Co., John Deere Road, Moline, Ill. 61265.
Deering-Milliken Inc., P.O. Box 3168, Spartanburg, S.C. 29302.
Detroit Edison Co., 2000 2d Avenue, Detroit, Mich. 48226.
Dow Chemical Co., Midland, Mich. 48640.
Dresser Industries, Inc., Republic National Bank Building, Dallas, Tex. 75221.
E.I. duPont de Nemours & Co., Market Street, Wilmington, Del. 19898.
Eastern Air Lines, 10 Rockefeller Plaza, New York, N.Y. 10020.
Eaton Corp., 100 Erieview Plaza, Cleveland, Ohio 44114.
Eli Lilly & Co., 740 South Alabama Street, Indianapolis, Ind. 46225.
Esmark Inc., 55 East Monroe Street, Chicago, Ill. 60603.
Exxon Corp., 1251 Avenue of the Americas, New York, N.Y. 10020.
Federated Department Stores, 222 West 7th Street, Cincinnati, Ohio 45202.
F[illegible] Tire & Rubber Co., 1200 Firestone Parkway, Akron, Ohio 44317.
First National City Bank, 399 Park Avenue, New York, N.Y. 10022.
FMC Corp., 200 East Randolph Drive, Chicago, Ill. 60601.
Ford Motor Co., The American Road, Dearborn, Mich. 48121.
GAF Industries, 140 West 51 Street, New York, N.Y. 10020.
General Cable Corp., 500 West Putnam Avenue, Greenwich, Conn. 06830.
General Dynamics Corp., Pierre Laclede Center, St. Louis, Mo. 63105.
General Electric Co., Fairfield, Conn. 06431.
General Foods, Inc., 250 North Street, White Plains, N.Y. 10602.
General Mills, Inc., 9200 Wayzata Boulevard, Minneapolis, Minn. 55440.
General Motors Corp., 3044 West Grand Boulevard, Detroit, Mich. 48202.
General Tire & Rubber Co., Akron, Ohio 44309.
The B.F. Goodrich Co., 500 South Main Street, Akron, Ohio 44318.
Goodyear Tire & Rubber Co., 1144 East Market Street, Akron, Ohio 44316.
The Greyhound Corp., Greyhound Tower, Phoenix, Ariz. 85077.
Gulf Oil Corp., Gulf Building, Pittsburgh, Pa. 15230.

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Gulf States Utilities Co., P.O. Box 2951, Beaumont, Tex. 77704.
Halliburton Co., 3211 Southland Center, Dallas, Tex. 75201.
The Hanna Mining Co., 100 Erieview Plaza, Cleveland, Ohio 44114.
H. J. Heinz Co., P.O. Box 57, Pittsburgh, Pa. 15230.
Hercules, Inc., 910 Market Street, Wilmington, Del. 19899.
Hewlett-Packard Co., 1501 Page Mill Road, Palo Alto, Calif. 94304.
Hoover Worldwide Corp., North Canton, Ohio 44720.
Ideal Basic Industries, Inc., 821 17th Street, Denver, Colo. 80202.
Ingersoll-Rand Co., Woodcliff Lake, N.J. 07675.
Inland Steel Co., 30 West Monroe Street, Chicago, Ill. 60603.
International Business Machines, Old Orchard Road, Armonk, N.Y. 10504.
International Harvester Corp., 401 North Michigan Avenue, Chicago, Ill. 60611.
International Nickel Co., 1 New York Plaza, New York, N.Y. 10004.
International Paper Co., 220 East 42d Street, New York, N.Y. 10017.
Iowa-Illinois Gas & Electric Co., Davenport, Iowa 52802.
Irving Trust Co., One Wall Street, New York, N.Y. 10005.
Johns-Manville Corp., P.O. Box 5108, Denver, Colo. 80217.
Kaiser Industries Corp., 300 Palesode Drive, Oakland, Calif. 94604.
Kennecott Copper Co., 161 East 42d Street, New York, N.Y. 10017.
Koppers Co., Koppers Building, Pittsburgh, Pa. 15219.
Krafteo Corp., Krafteo Court, Glenview, Ill. 60025.
Libbey-Owens Ford, 811 Madison Avenue, Toledo, Ohio 43624.
McGraw-Edison Co., 333 West River Road, Elgin, Ill. 60120.
R. H. Macy & Co., 151 West 34th Street, New York, New York, 10001.
Marcor Inc., P.O. Box 6511, Chicago, Ill. 60607.
3M Co., 3M Center, St. Paul, Minn. 55101.
Middle South Services, P.O. Box 61000, New Orleans, La. 70161.
Mobile Oil Corp., 150 East 42d Street, New York, N.Y. 10017.
Monanto Co., 800 North Lindburgh Boulevard, St. Louis, Mo. 63166.
Nabisco, Inc., 425 Park Avenue, New York, N.Y. 10022.
NL Industries, Inc., 111 Broadway, New York, N.Y. 10006.
National Steel Corp., Grant Building, Pittsburgh, pa. 15219.
The Norton Co., One New Bond Street, Worcester, Mass. 01610.
Olin Corp. 120 Long Ridge Road, Stamford, Conn. 06904.
Owens-Corning Fiberglas Corp., 717 Fifth Avenue, New York, N.Y. 10022.
Owens-Illinois, Inc., Madison Avenue & St. Clair Street, Toledo, Ohio 43666.
Pacific Gas & Electric Co., 77 Beale Street, San Francisco, Calif. 94106.
Pacific Power & Light Co., Public Service Building, Portland, Oreg. 97204.
J. C. Penney Co., 1301 Avenue of the Americas, New York, N.Y. 10019.
Pennzoil United Inc., 900 Southwest Tower, Houston, Tex. 77002.
Phillips Petroleum Co., Phillips Building, Bartlesville, Okla. 74004.
PPG Industries, One Gateway Center, Pittsburgh, Pa. 15222.
Proctor & Gamble Co., P.O. Box 599, Cincinnati, Ohio 45202.
Public Service Co. of Colorado, P.O. Box 840, Denver, Colo.
Public Service Indiana, 1000 East Main Street, Plainfield, Ind. 46168.
Public Service Co. of Oklahoma, Box 201, Tulsa, Okla. 74102.
Public Service Electric & Gas, 80 Park Place, Newark, N.J. 07101.
Ralston Purina Co., Checkerboard Square, St. Louis, Mo. 63102.
RCA Corp., 30 Rockefeller Plaza, New York, N.Y. 10020.
Republic Steel Corp., Republic Building, Cleveland, Ohio 44101.
Reynolds Metals Co., 6601 Broad Street, Richmond, Va. 23229.
R. J. Reynolds Industries, Inc., Winston Salem, N.C. 27102.
Roadway Express, Inc., 1077 George Boulevard, Akron, Ohio 44309.
Rockwell International Corp., 600 Grant Street, Pittsburgh, Pa. 15219.
Rohr Industries, Inc., P.O. Box 878, Chula Vista, Calif. 92012.
Scott Paper Co., Scott Plaza, Philadelphia, Pa. 19113.
Sears, Roebuck & Co., Sears Tower, Department 702, Chicago, Ill. 60684.
Shell Oil Co., P.O. Box 2463, Houston, Tex. 77001.
SIFCO Industries, Inc., 970 East 64th Street, Cleveland, Ohio 44103.
A. O. Smith Co., Milwaukee, Wis. 63216.
Southern California Edison Co., P.O. Box 800, Rosemead, Calif. 91770.
Southern Co., 64 Perimeter Center East, Atlanta, Ga. 33036.
Standard Oil Co. of Indiana, 200 East Randolph Drive, Chicago, Ill. 60601.
Stauffer Chemical Co., Westport, Conn. 06880.
Sundstrand Corp., 751 Harrison Avenue, Rockford, Ill. 61101.
TRW Inc., 23555 Euclid Avenue, Cleveland, Ohio 44117.
Tenneco, Inc., P.O. Box 2511, Houston, Tex. 77001.

Texaco, Inc., 135 East 42d Street, New York, N.Y. 10017.
Texas Gulf Sulphur Co., 200 Park Avenue, New York, N.Y. 10017.
Texas Instruments, Inc., P.O. Box 5474, Dallas, Tex. 75222.
Texas Power & Light Co., Fidelity Union Life Building, Dallas, Tex. 75201.
Trans World Airlines, 605 Third Avenue, New York, N.Y 10016.
Texas Gas Transmission Corp., 3800 Frederica Street, Owensboro, Ky. 42301.
Union Camp Corp., 1600 Valley Road, Wayne, N.J. 07470.
Union Carbide Corp., 270 Park Avenue, New York, N.Y. 10017.
Union Electric Co., P.O. Box 87, St. Louis, Mo. 63166.
Uniroyal, Inc., 1230 Avenue of the Americas, New York, N.Y. 10020.
United Aircraft Corp., 400 Main Street, East Hartford, Conn. 06108.
U.S. Steel Corp., 600 Grant Street, Pittsburgh, Pa. 15230.
Utah International Inc., 550 California Street, San Francisco, Calif. 94104.
Westinghouse Electric Corp., Gateway Center, Pittsburgh, Pa. 15222.
Weyerhaeuser Co., Tacoma Building, Tacoma, Wash. 98401.
Wheeling-Pittsburgh Steel Corp., P.O. Box 118, Pittsburgh, Pa. 15230.
Semon E. Knudsen, White Motor Corp., 100 Erieview Plaza, Cleveland, Ohio 44114.
Zerox Corp., Stamford, Conn., 06904.

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INLAND CONTAINER CORP.,
*Indianapolis, Ind., June 30, 1975.*

Hon. PHILIP A. HART,
*U.S. Senate,*
*Washington, D.C.*

MY DEAR SENATOR HART: I have carefully reviewed the provisions of this proposed legislation and am taking this opportunity to inform you of my views.

It is my opinion that the existing body of antitrust law adequately assures the existence of a continued competitive business environment, a principle, I might add, in which I firmly believe.

The proposed drastic revisions of certain of the present federal statutes are unwarranted, harsh and parts may prove to be, in fact, anti-competitive. It is inconceivable to me that Government continues to impose further restrictions on business which will make our capitalistic system even more non-competitive in world markets.

I respectfully urge that you consider the best interests of our country and vote against this proposed legislation.

Sincerely,

HENRY C. GOODRICH,
*President.*

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[MAILGRAM]

OLIN CORP., *July 9, 1976.*

While we in the Olin Corporation oppose all substantive provisions of S. 1284 as unnecessary, we are particularly concerned with Titles II and IV.

The Justice Department already has very substantial investigatory powers, both compulsory through grand jury subpoenas and civil investigative demands and generally through fact-finding capabilities of its personnel, the FBI and other Government agencies. Title II would give the Department almost unlimited powers which would serve mostly to threaten individual and personal freedoms. There is nothing in our history since the Department was given civil investigative powers in 1962 to warrant such additional authority.

Title IV of the parens patriae theory is primarily a punitive measure which does not even pretend to equate actual injury to individuals to the damages sought. A concern which violates the antitrust laws, even unintentionally, is already faced with very substantial liabilities in the form of fines and of treble damage actions, both individual and class, which a State already has the ability to bring if damaged. To require such a concern to face 50 additional actions, each financed with taxpayers' money, is simply to punish the stockholders of that concern rather than the individuals who may have violated the law.

We earnestly urge you to drop any further consideration of S. 1284.

Thank you.

*General Counsel.*

# Gannett

DOUGLAS H. McCORKINDALE
Vice President
General Counsel and Secretary
55 Exchange St.
Rochester, NY 14614

October 29, 1975

Mr. Thomas B. Mechling
President
Public Equity Corporation
Box 361
Larchmont, New York 10538

Dear Tom:

I read in the recent issue of Automotive News an indication that your corporation is interested in buying a percent of the litigation now being pursued by attorney Carl Pierson. When you get a change, I would appreciate it if you could give me a call so that I could learn more about your motives and the background of your decision.

Regards.

Sincerely,

DHMcC:jld

Douglas H. McCorkindale

10/31 --

Dear Doug, the above is an indication of interest, not a committment, for we have a long, hard pull until the March 31, 1976, "deadline date" to get the Public Equity issue subscribed. All best wishes. I've copied your letter to Attorney Carl Pierson if he wishes to add [illegible] A World of Different Newspapers

Tom Mechling



Exhibit C.

WSJ 8/12/76 p. 6

# Shopping for Groceries From the Kitchen With Home Delivery Tries for Comeback

By ERNEST TOLLERSON
*Staff Reporter of* THE WALL STREET JOURNAL

NEW YORK—The concept of home delivery for groceries is trying for a comeback, this time with the help of catalogs, computers and the lure of supermarket prices.

Before supermarkets, shoppers could call the local grocery with their week's shopping list and have the order home-delivered. But the convenience disappeared, along with many neighborhood grocery stores, when the supermarkets moved in.

But home delivery is what's offered at Futuristic Foods Inc., a warehouse-to-home grocery products company serving the Brooklyn and Queens sections of New York. The privately held concern, which opened its doors recently, offers a full line of grocery products.

"We'll give the service you can't get in a supermarket at supermarket prices," asserts Arthur Shevack, president.

**Catalogs Are Used**

To place an order, the shopper makes a selection from the company's catalog, then telephones a computer operator at Futuristic Foods. The operator takes down the shopping list and feeds it into a computer. The computer supervises the mechanical warehouse that actually does the shopping.

Mr. Shevack says customers with touch-tone telephones soon will be able to bypass the computer operator and feed their account numbers and orders directly into the computer.

Orders are normally phoned in a day ahead for delivery the following day, or when the customer requests delivery. Payment is made to the deliveryman.

"If a family's time is worth a great deal," he says, "they'll shop here. It's more convenient to pick up the phone, use our bimonthly price list and loose-leaf catalog and shop from the kitchen table."

Mr. Shevack says the company's Brooklyn warehouse has the capacity to handle the volume generated by nine supermarket outlets. Warehouse-to-customer concerns, he says, eliminate the labor, utility and other costs of operating the supermarkets supplied by a warehouse.

Warehouse-to-customer concerns in the retail-food industry aren't new. Jewel Cos., the Chicago-based supermarket chain, has had a direct-marketing division in more than 40 states for 55 years.

The Jewel unit, however, offers a limited product-line that excludes meat, produce, canned fruits and vegetables and frozen food items. Other entrants into the direct-marketing field have failed for a variety of reasons.

Stock analysts and other experts who follow the supermarket industry say the economics of food-retailing militate against success. "Supermarkets are a high-volume, low-margin business," says Dennis Ross, a San Francisco-based analyst. "The profit margins are being made on nonfood products and that means items like toothpaste and motor oil."

"I don't see how you can give a lot of service (delivery) and still afford to have pricing that's competitive with supermarkets," he adds.

Betty McFadden, who heads Jewel's direct-marketing unit, likes the full-line concept, but is also pessimistic about its chances. "It's an attempt to trade real estate and other costs of operating supermarket outlets for delivery costs."

The checkered history of these companies was examined in a 1974 report by the Massachusetts Institute of Technology, which considered them a feasible near-term alternative to self-service supermarkets. The study added that its customers would include the elderly, the handicapped, the blind, households with both spouses working and the urban poor who live in areas with few supermarkets.

**Warehouses Are Close**

Futuristic Foods operates on a routine system similar to that used by the Postal Service. All neighborhoods served by the company are within a five-mile radius of the warehouse.

"Beyond five miles it isn't profitable to make deliveries," Mr. Shevack says. Expansion in this business, he says, means adding strategically located warehouses instead of extending driver routes.

Mr. Shevack learned that lesson when the company first opened in 1973. It operated out of a facility in Long Island, N.Y., and served customers in New York City and nearby suburbs. About a year ago, the company closed down to relocate in Brooklyn and design a computer system to balance grocery orders and warehouse inventory.

Consumer reaction on the first day of service was mostly favorable, according to a highly unscientific poll of some customers. But there was a slight delay in some deliveries, due, not to human error, but a blown computer memory circuit.

Exhibit 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | 76 C 1217 (ERN) |
| Plaintiffs, | : | THEE AFFIDAVIT |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

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STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK)

CHRISTIAN THEE, being duly sworn, deposes and says:

1. I am a plaintiff in this action, am fully familiar with the facts stated herein, and make this affidavit in further support of plaintiffs' preliminary injunction motion, in opposition to defendant's motion to dismiss, for partial summary judgment, attorneys' fees and other relief, and in support of Person's cross-motion to disqualify and remove defendant's attorneys, for a continuance and discovery relating to defendant's Rule 56 summary judgment motion, attorneys' fees and other relief.

2. No shares have been sold in my offering, even though I and Person have undergone a considerable effort and monetary expense (amounting to thousands of out-of-pocket dollars, much of which has been advanced by Person) to sell the shares.

3. I have read the description of my damages and other injuries at pp. 36-39 of Person's Memorandum dated September 6, 1976 and state that the description is accurate (with the reservation that the million-dollar damage figures need to be proven by one or more expert witnesses at the time of trial).

4. Plaintiffs made and are continuing to make an effort to sell the shares. I have turned over my leads to Person, who advises me that he or his staff is sending out a copy of the offering circular, subscription form and transmittal letter to all New York residents who inquire about the offering (other than corporations or associations); nevertheless, the type of person who responded to the News and (several insignificant) other tombstones did not buy any shares and does not appear to be the type of inquirer plaintiffs would have obtained through the publication of their tombstone advertisement in the Post, New York Times and Wall Street Journal, the readers of which can be expected to respond to tombstone advertisements and buy the offered shares, judging from the fact that persons in the securities industry appear to use the papers on a regular basis for publication of tombstones.

5. I was never aware until sometime after the refusals that the Post, NYT, WSJ and other newspapers and magazines would not be willing to accept the offered advertisement and was surprised to find out that they and other magazines and newspapers rejected the advertisement. I have been a steady reader of the Post for years and have seen various tombstone advertisements (although I did not know then what they were called) published

in the Post prior to my decision to offer litigation shares through a Regulation A public offering; and I had no reason to believe that the Post or any other newspapers would refuse to print any tombstone advertisements offered, including mine, at least if the tombstone covered an offering reviewed by the SEC; also, I have never seen any notices by the Post that it does not publish all tombstones offered to it, or any description by the Post of the basis on which it accepts or rejects submitted tombstones.

6. I was told by Person, before agreeing to file for a Regulation A public offering, that the offered shares probably could be sold on a "self-underwritten" basis by the placement of tombstone advertising in several key newspapers in New York City, including the Post, particularly because of the uniqueness of the offering of shares in a lawsuit; and I relied in part upon the Post's implied representations, as discussed above, when deciding to seek public financing for my antitrust litigation. As a consequence, I was defrauded and have suffered the damages and other injuries referred to in ¶ 2 above, because of my reliance on the Post's implied, material representation, which turned out to be false; the continued activities of the Post are preventing plaintiffs from selling the shares.

7. I am unable to offer affidavits in successful opposition to defendant's motion for partial summary judgment on the antitrust conspiracy claim because the facts needed for plaintiffs to prove the alleged conspiracy are known only to defendant and its co-conspirators. It is essential that plaintiffs obtain discovery of defendants, the co-conspirators and others

to be able to provide successful opposition to defendant's motion, and I join in Person's request for a continuance of defendant's motion and for the opportunity to obtain discovery, under Rules 26 (regular discovery) or 56(f), discovery for the limited purpose of opposing the summary judgment motion.

8. I hereby join in plaintiff Person's cross-motion (as I already have joined in plaintiff Person's motion for a preliminary injunction).

Christian Thee

Christian Thee

Subscribed and sworn to before me
this 6th day of September, 1976.

Notary Public

MA J. EURICH
NOTARY PUBLIC, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | 76 C 1217 (ERN) |
| Plaintiffs, | : | EHRLICH AFFIDAVIT |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

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STATE OF NEW YORK )
: ss.:
COUNTY OF NEW YORK)

IRA J. EHRLICH, being duly sworn, deposes and says:

1. I am a legal assistant to plaintiff Carl E. Person, an attorney, am fully familiar with the facts stated herein, and make this affidavit in support of plaintiff's cross-motions.

2. On June 25, 1976, in connection with my service of the summons and complaint in this action on the Post, I asked a Post guard on the main floor at the Post's place of business, 210 South Street, New York, New York, to see the "in house counsel", to serve the papers. The guard told me that the Post "had no attorneys" at the Post's place of business.

3. Also, on July 2, 1976, when I was serving the motion papers for Person's preliminary injunction, Ms. B. Lopez, secretary to Byron Greenberg, the Post's General Manager and Treasurer, asked me why I did not take the papers to the Post's attorneys, Messrs. Paul, Weiss, Rifkind, Wharton & Garrison.

Subscribed and sworn to before me this 7th day of September, 1976.

Denise G. Martinez

Ira J. Ehrlich

DENISE [illegible]
Notary P[illegible] York
N[illegible]
Qualif[illegible] County

PLAINTIFFS' STATEMENT PURSUANT TO RULE 9(g)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | 76 C 1217 (ERN) |
| Plaintiffs, | : | STATEMENT PURSUANT TO RULE 9(g) |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

Plaintiffs oppose defendant's motion for summary judgment dismissing plaintiffs' Sherman Act § 1 claims. Inasmuch as plaintiffs have not obtained the discovery they need to successfully oppose defendant's motion, plaintiffs set forth some of their contentions below based on information and belief. It is entirely possible that some of such contentions may not be provable at the time of trial and will drop out as issues of material fact. Subject to the foregoing and pursuant to Rule 9(g) of the General Rules of this Court, plaintiffs contend that there are genuine issues to be tried as to the following material facts:

1. A lawful interest in Person's 35% contingent fee in the Thee Action was being offered to the public in Thee's public offering of lawsuit shares;

2. The tombstone advertisement was offered jointly by Person (as trustee of the moneys to be raised) and Thee, as the person with the antitrust and other claims as to which the offering was being made;

3. The New York Post Corporation ("defendant"), as publisher of the New York Post ("Post"), does not judge each submitted advertisement on its

own merits, but has a policy of accepting or rejecting advertisements of any kind based on the competitive effect the advertiser's business or other activities (such as litigation) would have on the business or other activities (such as litigation) of major corporate advertisers in the Post, actual or prospective (unless the offering advertiser itself is a major corporate advertiser);

4. On June 22, 1976, Person's legal assistant, Ira Ehrlich, delivered the tombstone advertisement to Richard LeLong, of the Post's financial advertising department, who quickly ran through the offering circular and told Ehrlich that the offering circular would have to be approved by the SEC before the Post could consider running the ad. Ehrlich told LeLong that Person's accompanying letter explained that the offering had been cleared to commence on June 25th, by order of the SEC;

5. LeLong asked Ehrlich about any provision for refunds to investors if all of the offering was not sold, and Ehrlich stated that he believed there was a provision to such effect (alluding to a provision for refunds if the minimum amount needed by plaintiffs was not raised); LeLong repeated his question about wanting to see a provision for refund to investors in the event the whole issue was not sold; LeLong said that in any event the offering circular would have to be examined by a committee of the Post before the advertisement could be published; the offering circular has a provision allowing investors, at any time (even if the Thee Action is lost) to redeem their shares for 100% or virtually 100% of their investment, upon 7 days' written notice;

6. Upon information and belief, the Post publishes tombstone advertisements for "straight best-efforts offerings" — offerings which have no provision for refunds in the event less than a certain amount of shares is

sold, as well as "best-efforts, minimum-or-none offerings", based in part on the Post's own claim that it has never refused a tombstone advertisement before;

7. On June 23, 1976, LeLong called Person's office and spoke with Ehrlich advising him that the Post was "rejecting the ad" as "not suitable" for publication in the Post.

8. During the morning of June 25, 1976, Lawrence Goldreyer, the Post's Financial Advertising Director, told Person that the tombstone advertisement was passed through to the Post's Advertising Acceptability Committee (which plaintiffs allege is non-existent), which refused the advertisement as "not acceptable"; that such rejection was typical of the Post's procedures; and that this happened with great frequency with tombstones;

9. Several minutes later, Goldreyer called Person and told him that he gave or was giving the materials to Byron S. Greenberg (a Director, the Treasurer and General Manager for the Post, immediately under the publisher), who would call Person back;

10. About 17 minutes later, Greenberg called Person saying that he received the materials; glanced slightly through them; he claimed that the "Advertising Acceptability Committee" of the Post found the advertising "not acceptable"; that he supposed it was a policy not to accept offerings of "contingent interests"; that the Post has rejected other tombstone advertisements; that the Post does this rejecting of advertising based on criteria; that there may be a number of aspects to such criteria; that the Post made a "judgment call" based on a review of plaintiffs' submitted copy and the background on it; and that such rejection was the view of the Committee; and that for specific (non-disclosed) reasons the Post believed the ad not acceptable;

11. Person told Greenberg that he was filing a federal action on the same day, to settle this tombstone refusal procedure of the New York City newspapers once and for all; and that he should tell the Committee about the forthcoming suit to see if it would reconsider its decision; no reply was forthcoming from defendant;

12. Ehrlich served Greenberg with a copy of the summons and complaint at 4:55 P.M. on the 25th of June; when Ehrlich had arrived at 210 South Street to serve the papers, Ehrlich asked the Post guard on the main floor to see the "in house counsel" for the Post; the guard told Ehrlich that the Post "had no attorneys" on the premises;

13. On July 2, 1976, when Ehrlich was serving the papers for plaintiffs' preliminary injunction motion on Ms. B. Lopez, secretary to Greenberg, she asked Ehrlich why he did not take the papers he was serving to the Post's attorneys, Messrs. Paul, Weiss, Rifkind, Wharton & Garrison ("Paul, Weiss"); this occurred prior to the appearance of Paul, Weiss in this action;

14. The Post has had no attorney representing defendant or the Post with an office at 210 South Street from June 22, 1976 to July 2, 1976, inclusive;

15. For at least several years prior to and during the period June 22, 1976 to July 2, 1976, defendant and the Post were represented in various matters unrelated to the Thee tombstone advertisement matter by Paul, Weiss;

16. From December, 1970 to the present, Paul, Weiss has represented General Motors Corporation ("GM"), General Motors Acceptance Corporation and GM officials Frederic G. Donner and James M. Roche (hereinafter, collectively, the "GM Defendants") in an action by National Auto Brokers

Corp. ("Nabcor") and 9 other plaintiffs (hereinafter, collectively, the "Nabcor Plaintiffs");

17. At all times from December, 1970 to the present, Person has represented the Nabcor Plaintiffs against the GM Defendants and other defendants (the "Nabcor Action");

18. The Nabcor Action has been inadequately financed at all relevant times and this has been known to Paul, Weiss, and such inadequate financing has been the primary basis for the defense strategies employed by Paul, Weiss and the GM Defendants;

19. Paul, Weiss knew of the commencement of Person's action, in September, 1975, against The Association of the Bar of the City of New York, the Appellate Divisions of the New York State Supreme Court for the First and Second Departments and the New York Attorney General, 75 C 1473 (JFD) within days after the action was filed, and even obtained and reviewed a copy of the complaint, in which Nabcor's dire need for financing of its Nabcor Action was fully described;

20. This Bar Association Action was for the specific purpose of obtaining a judicial decision that such financing on behalf of the Nabcor Plaintiffs and other actual and prospective antitrust clients of Person was lawful, and stated that Person and the Nabcor Plaintiffs planned to make a public offering of shares in the Nabcor Action;

21. During 1975, Person filed a complaint with the Grievance Committee of the Bar Association to the effect that Paul, Weiss had solicited franchisees of Nabcor to bring civil and to encourage criminal authorities to commence criminal proceedings against Nabcor and its two principals (to be based on alleged non-performance of franchise contracts which the Nabcor Plaintiffs allege was caused, if at all, by GM's illegal interference

with Nabcor's system for selling new cars), for the purpose of providing the GM Defendants with an apparent defense in the Nabcor Action;

22. The Grievance Committee of the Bar Association stated to Person that it refused to hear the grievance until the Nabcor Action was terminated;

23. Upon information and belief, a top partner of Paul, Weiss, now the President of the Bar Association, was the President Elect (or known by the Grievance Committee to become such) at the time of the refusal by the Grievance Committee to hear Person's complaint;

24. Paul, Weiss and the GM Defendants are fully aware that if the Nabcor Plaintiffs obtain the financing they need through their planned public offering of lawsuit shares, the Nabcor Plaintiffs would have a greater opportunity for winning the Nabcor Action, maximizing their monetary recovery (amounting to a possible hundreds of millions of dollars) and obtaining a permanent injunction against GM, Ford Motor Company, Chrysler Corporation and American Motors Corporation (the "Big Four") which would, in effect, destroy the franchise systems of the Big Four, or require them to undergo substantial modification; also, a Nabcor win would reduce typical retail prices charged by Big Four Franchisees for new cars — from $200 to $1,000 per car, and save the public many billions of dollars each year;

25. Also, if the Nabcor Plaintiffs obtained the needed public financing and win the Nabcor Action, Paul, Weiss would run the grave risk of professional discipline for the alleged activities of soliciting persons to file civil and criminal complaints against Nabcor, as stated in ¶ 21 above, in violation of their rights under 42 U.S.C. §§ 1985(2), 1986.

26. Upon information and belief, defendant discussed Person's plans to finance the antitrust litigation of the Nabcor Plaintiffs, Thee and other clients with (i) Paul, Weiss; (ii) the publishers of various other

newspapers in or around New York City which refused to publish the tombstone ad of Thee; (iii) other newspapers; and (iv) others; and these communications were to arrange a boycott of any tombstone advertising by clients of Person, including Thee and the Nabcor Plaintiffs, and any other persons who would sell shares in lawsuits;

27. Upon information and belief, defendant communicated with and obtained advice or instructions from Paul, Weiss not to accept the Thee tombstone advertisement or any tombstone advertisement for any public offering of shares in a lawsuit, as part of a conspiracy between Paul, Weiss and the GM Defendants to prevent persons, including the Nabcor Plaintiffs, from selling shares in lawsuits; the advice or instructions were part of Paul, Weiss' representation of the GM Defendants, acting as agent for the GM Defendants and not purely or at all in the capacity as attorney for the Post;

28. At such time, the Bar Association, with a top partner in Paul, Weiss as its highest official, was opposing Person's action in federal court to establish such a right to sell shares and to obtain related suit financing (the use of expert witnesses on a reasonable contingent-fee basis);

29. Defendant refused the offered tombstone advertising for the purpose of protecting major corporate advertisers in the Post (actual or prospective) from persons who, with the public financing of lawsuits, would be able to compete with such corporations effectively in the courts, and therefore would be able to compete effectively in business as a result of favorable court decisions;

30. Upon information and belief, defendant has been promised payments or benefits (such as payment of the Post's litigation expenses herein, indemnification as to any liability, increased volume of advertising

or higher advertising rates, or other payments, directly or indirectly) for its activities in refusing to publish the tombstone advertisements for offerings of shares in the Thee Action, the Nabcor Action, and any other lawsuits;

31. Upon information and belief, defendant has communicated with one or more of the persons described in ¶¶ 29-30 above and agreed and conspired with them not to publish tombstone advertisements for the Thee offering or any other person selling or attempting to sell shares in a lawsuit;

32. As part of the alleged conspiracy, defendant has adopted a policy not to accept or publish any tombstone advertisements with respect to the offering or sale of shares in a lawsuit; and such policy is the immediate reason that the Post rejected plaintiffs' offered tombstone advertising;

33. Defendant has a policy of providing specific editorial support to some public offerings of securities for which tombstones are accepted and published by the Post;

34. Defendant has a policy of providing editorial support to major corporate advertisers and against small businesses which would compete with such major advertisers ("Competing Small Businesses");

35. This editorial policy results in the withdrawal or modification of important news articles and opinion columns which, if disclosed to Post readers, would tend to injure the major corporate advertiser in some economic way;

36. Also, the editorial policy results in the non-publication of information in news articles and opinion columns which would benefit Competing Small Businesses, if such information would tend to injure, in some economic way, any major corporate advertisers in the Post;

37. The Post has a policy of rejecting non-tombstone advertising offered by Competing Small Businesses and, upon information and belief,

this policy has been in effect for at least the past 10 or 20 years;

38. Each of the other major daily newspapers of general circulation in the New York City metropolitan area has an editorial policy similar to that described in ¶¶ 33-37 above;

39. The policy of each newspaper is known to each other newspaper, and the Post, therefore, is aware of the same policy in existence at each of the other newspapers of general circulation in the metropolitan New York City area;

40. Upon information and belief, the advertising managers of such newspapers, including the Post,* have regular meetings or communications concerning the acceptability of advertising offered by Competing Small Businesses, through their positions as directors of The Better Business Bureau of Metropolitan New York, Inc. (the "BBB"), which acts illegally as a trade association for the major businesses favored by the Post and other newspapers, and against the interests of the public and the Competing Small Businesses, some of which (including the Nabcor Plaintiffs) are not permitted to become members of the BBB;

41. The "C" part of the 5 Nabcor Actions alleges such relationship between the newspapers (including the Post) and the BBB, and is scheduled to go to trial later this year or early next year; Paul, Weiss is fully aware of these allegations in the "C" suit;

42. The Post rejected advertising offered by one or more of the Nabcor Plaintiffs during 1966 or 1967, but was not named a defendant in the Nabcor Action because the communications between the Post and the Nabcor Plaintiffs were relatively insignificant in comparison to the volume of

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* Daniel L. Lionel, Adv. Mgr., and Mortimer W. Hall, Adv. Dir.

communications admissible as evidence between the Nabcor Plaintiffs and the other newspapers named as defendants in the Nabcor Action (including the The New York Times);

Dated: New York, New York
September 7, 1976

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PLAINTIFF THEE'S NOTICE OF JOINDER OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| CARL E. PERSON and CHRISTIAN THEE, | : | 76 C 1217 (ERN) |
| Plaintiffs, | : | NOTICE OF JOINDER OF MOTION |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

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PLEASE TAKE NOTICE that upon all the pleadings and prior proceedings had herein, plaintiff CHRISTIAN THEE hereby joins in plaintiff Person's cross-motions for the reasons set forth in plaintiff Person's moving papers.

Dated: New York, New York
September 7, 1976

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, : 76 C 1217 (ERN)

-against- :

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - - - - - -x

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS' PRELIMINARY INJUNCTION MOTION AND IN SUPPORT OF PERSON'S CROSS-MOTION, AND IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, FOR PARTIAL SUMMARY JUDGMENT AND OTHER RELIEF

This reply memorandum of law is submitted in support or further support of plaintiffs' original motion for a preliminary injunction and plaintiff Person's cross-motion for disqualification and removal of defendant's attorneys, a continuance and discovery, costs and attorneys' fees and other relief, and in opposition to defendant's motion to dismiss, for partial summary judgment (§ 1, Sherman Act claims), costs and attorneys' fees and other relief.

## Preliminary Statement

This lawsuit concerns the rights of plaintiffs, as private attorneys general, to have access to the courts to obtain civil relief from alleged violations of the nation's antitrust laws by major corporations through the financing of litigation costs by a public offering of lawsuit shares, in

compliance with the Securities Act of 1933, and Regulation A thereunder. The major corporations are (or are expected by defendant to be) major advertisers in the daily newspaper published by defendant (the "Post"). Person, as an antitrust attorney representing small businesses, is establishing a "private justice department", to provide legal and/or paralegal assistance to persons (such as plaintiff Thee) who have meritorious antitrust claims and their attorneys, throughout the United States. A major part of such assistance is obtaining adequate financing for the litigation, in compliance with the Securities Act of 1933. The combination of legal, paralegal and financing skills and effort needed to provide the overall assistance to antitrust claimants and their local attorneys needs to be provided in a single package, which Person calls his "private justice department" or "national litigation center". Person claims he is a "political litigator" (under the rationale of NAACP v. Button, 317 U.S. 415 - 1963) in his role as a private attorney general, and that he has standing in this action to defend his activities as a private justice department from being injured by violations of various federal laws. Also, see Person v. The Association of the Bar of the City of New York, 414 F.Supp. 133 (E.D.N.Y. 1975), in which Judge Platt stated:

> "Plaintiff, on the other hand, claims that the Semler line of cases is inapplicable to the type of services as to which he proposes to advertise, namely: 'public interest' or 'politically-expressive' litigation in the antitrust, securities, civil rights,... etc. fields. As to this type of litigation and advertising with respect thereto, plaintiff argues that the Button and Bigelow cases have, in effect, carved out an exemption which falls within the protection of the First Amendment and which is without the scope of legitimate regulation by a State."

After the Securities and Exchange Commission ("SEC") permitted Thee to proceed with his Regulation A public offering, in which plaintiff Person acted as attorney for Thee (without compensation, providing about $25,000 in legal services in support of Thee's action), and in furtherance of the suit financing plan, the plaintiffs offered a "tombstone" advertisement to about 24 newspapers and magazines in New York City, including the Post, and were rejected by 6 newspapers and 6 magazines, including all of the newspapers essential to achieve a sale of the offered securities (Post, Wall Street Journal, and New York Times). General Mills, Inc. and a subsidiary (defendants in the Thee Action described in the public offering circular) are actual or prospective major advertisers in the Post. Also, other companies being sued for antitrust claims by clients of Person, who plan to sell shares in their lawsuits as well, are actual or prospective major advertisers in the Post, including GM, GMAC, Ford, Chrysler, American Motors, Citibank and various franchised dealers of GM and Ford.

As a result of this refusal to deal by the Post, the Post and its attorneys, officers and employees and others have violated various federal laws: Sherman Antitrust Act, Securities Act of 1933, Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and §§ 1985(2) and 1986 of the Civil Rights Act. Defendant's answer appears to be that the First Amendment freedom of the press entitles the Post to an exemption from the requirements of the foregoing laws, and that the Post with complete impunity can violate each of these statutes, improperly hiding behind "freedom of the press" as a legal excuse for preventing the reading public from obtaining meritorious and valuable information about a lawful offering of shares in a lawsuit - an obvious perversion of the valuable freedom to increase the profits of the Post and its major corporate advertisers, at the public's expense.

Through amendment by the "Amended Complaint", dated July 4, 1976 (9 days after the date of the original complaint), plaintiffs' alleged that the Post would be represented in this action by Messrs. Paul, Weiss, Rifkind, Wharton & Garrison (hereinafter, "Paul, Weiss"), and that Paul, Weiss conspired with defendant and others to commit the violations of law alleged in the Amended Complaint. (See ¶ 8g of the Amended Complaint and the 2nd Amended Complaint.)

Paul, Weiss represents General Motors Corporation ("GM"), General Motors Acceptance Corporation ("GMAC"), James M. Roche (former President and Chairman of the Board of GM) and Frederic G. Donner (former President and Chairman of the Board of GM) - hereinafter, the "GM Defendants" in an action by National Auto Brokers Corp. ("Nabcor") and 9 other plaintiffs against the GM Defendants and 59 other defendants, entitled National Auto Brokers Corp., et al. v. General Motors Corporation, et al., 70 Civ. 5421 (TPG), in the Southern District of New York. Also, Paul, Weiss did most of the legal work on which the other defendants relied for their defense. (Some of the served defendants have never appeared at any hearing to this day, because of the defense provided by Paul, Weiss.) The GM part of the Nabcor Action (1 of 4 severed parts) is scheduled to go to trial (by jury) this month. Person is attorney for the Nabcor Plaintiffs in the Nabcor Action and Paul, Weiss, as attorneys for the GM Defendants, are fully aware that Person and his Nabcor Plaintiffs plan to make a public offering of shares in the Nabcor Action. See the Person Aff't and related exhibits.

To establish the right of Person and his antitrust clients to sell shares in their lawsuits, Person, as plaintiff, commenced an action in the

Eastern District of New York on September 8, 1975, entitled Person v. The Association of the Bar of the City of New York, et al., 75 C 1473 (JFD), in which Judge Dooling held that there were lawful ways under New York's champerty and maintenance laws for Person and his clients (the Nabcor Plaintiffs and others) to raise through public offering the money needed by them to finance their major antitrust actions by offering and selling shares in the actions to public investors. The Ethics Committee of the defendant Bar Association rendered two informal written opinions not inconsistent with Judge Dooling's written opinion, and the Securities and Exchange Commission reviewed plaintiffs' filing under Regulation A and allowed Thee to commence his public offering of shares in two actions against General Mills, Inc., General Mills Fun Group, Inc. (formerly named Parker Brothers, Inc.) and Marvin Glass & Associates.

The New York Times, Wall Street Journal and Post refused to accept the offered "tombstone" advertisement, which has made it virtually impossible for plaintiff Thee to sell his shares. This parallel action by the newspapers which dominate the market for the running of tombstone advertising in New York City may be evidence of the alleged conspiracy, under the doctrine of conscious parallelism, particularly because the New York Times and Wall Street Journal are (NYT) or were (WSJ) defendants in the Nabcor Action and (as to NYT) in an action which is coordinated or consolidated with one of the 5 separate actions* making up the whole Nabcor Action for pre-trial purposes (70 Civ. 5421B - TPG). Many of the magazines which refused the tombstone advertisement are published by another defendant (Time, Inc.) in the coordinated or consolidated suit.

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* To be tried in 4 separate trials.

The GM Defendants and their attorneys, Paul, Weiss, have been aware throughout Person's year-old action against the Bar Association that Person and his Nabcor plaintiff clients intended at some point to offer shares in the Nabcor Action to the public, and that such a development would be against the best interests of the GM Defendants and other defendants in the Nabcor Action.

Paul, Weiss also have another conflict in this action. One of the top partners, Adrian W. DeWind, Esq., is the newly-elected and present President of The Association of the Bar of the City of New York, defendant in the action (75 C 1473) in which plaintiff Person, as plaintiff, sought and obtained a ruling on which plaintiffs rely in their efforts to sell shares in the Thee Action. Also, the Bar Association, under the doctrine of State Action, is the prosecutor for New York State in enforcing the Bar Association Disciplinary Rules which, under rules and/or decisions of the Appellate Divisions, have the effect of court rules.

Defendant Bar Association, before and during Mr. DeWind's Presidency, maintained in the Person action against the Bar Association that the sale of shares was not legal under New York law, and Paul, Weiss has a conflict with respect to that position of the Bar Association. Also, a judgment is being entered in such action declaring DR 7-109C unconstitutional, a rule prohibiting the use of expert witnesses on a contingent-fee basis, however reasonable the contingent fee. Defendant Bar Association has to decide whether to appeal from the final judgment, a decision to be made by President DeWind, which would assist GM if the decision were to appeal, by delaying Person's use of expert witnesses on a contingent-fee basis until after the GM trial, when it would be too late for Person and his Nabcor Plaintiffs to use any

such witnesses. The continuing role of Paul, Weiss with the Bar Association in connection with the Nabcor Action and the Thee Action represents an irreconcilable and continuing conflict of interest with the Post in this action.

Furthermore, Person has filed a grievance (the only grievance ever filed by him against any attorney in 14 years of practice) against Paul, Weiss and two of its attorneys (one of whom is now a partner) relating to an alleged solicitation by them of private persons (all Nabcor franchisees) to bring or request commencement of civil and criminal proceedings against Nabcor and its principals, after the Nabcor Action was commenced, as an alleged defensive procedure on behalf of the GM Defendants, who are accused by the Nabcor Plaintiffs of having destroyed Nabcor's automobile brokerage franchise system for the sale of new cars to the retail public at substantial discount prices. By getting persons to bring suits against Nabcor, Paul, Weiss, could make it appear in the Nabcor Action that Nabcor and its two principals were violators of law, not GM and its officials and franchisees, and that Nabcor's allegations that GM told about 80 of its franchisees (all identified by Nabcor) not to sell cars to Nabcor or its franchisees was a fabrication by Nabcor and its numerous witnesses. The Grievance Committee of the Bar Association has refused to hear the grievance until the Nabcor Action has been terminated (see letter to Person from the Grievance Committee dated May 20, 1975, annexed as an exhibit to the Person Aff't). Accordingly, Paul, Weiss has a vital interest in preventing Nabcor from obtaining the financing it needs to win the Nabcor Action (in which case Person would be free to pursue the grievance backed by a jury verdict rejecting Paul, Weiss' unique defense for GM); whereas, if the Nabcor Plaintiffs settled the

Nabcor Action, any settlement, as a practical matter, would probably include an informal or practical understanding to drop all outstanding claims, to bring the 6-year case to an end). For this reason, Paul, Weiss has a substantial conflict of interest with the Post and should not be allowed to represent the Post in this action. It seems doubtful that the Post has ever been told of this conflict of interest.

The foregoing is background information to understand why the Post rejected the offered advertisement, during June, 1976, when Person and Thee sought to place a tombstone advertisement for the Thee offering with the Post. The Post presumably sought legal advice from its attorneys, Paul, Weiss (who represented the Post in the Pentagon Papers lawsuit) (a matter which has not been denied or explained in any of defendant's papers). When Person's legal assistant, Ira Ehrlich, asked a Post guard to see the "in house counsel" for purposes of serving a copy of the initial complaint on the Post, the guard told Ehrlich that the Post "had no attorneys" at the Post's place of business at 210 South Street. Also, on July 2, 1976, when Ehrlich was serving the motion papers for the plaintiffs' preliminary injunction motion, Ms. B. Lopez, secretary to Byron Greenberg, the Post's General Manager and Treasurer, asked Ehrlich why he did not take the papers he was serving to the Post's attorneys, Paul, Weiss. This occurred prior to the appearance by Paul, Weiss in this action.

As a result of these disclosures to Ehrlich, plaintiff Person amended his complaint (dated July 4th and served by hand July 6th) and alleged at ¶ 8g that Paul, Weiss conspired with the Post and others to stop plaintiffs from running their tombstone advertisement in the Post. The alleged purpose of such conspiracy is:

> "....to prevent capital from being raised by persons such as plaintiffs and Person's other clients in competition with or against the best interests of the major corporations which regularly advertise (or may advertise) in their newspapers, or the major corporations which in fact own most of the major daily newspapers in New York City". (¶ 10 of the Amended Complaints.)

The Post's desire to litigate raises an interesting question of who is financing the Post's considerable expenses in defending itself herein. The Post is known to be in poor financial condition, and it would seem to be in the best interests of the Post to take any advertising it can get. Yet, the Post rejected some profitable advertising, present and future (offered by plaintiffs) and bought a lawsuit instead, represented by GM's attorneys, knowing that an expensive federal lawsuit was about to be commenced, if the Post continued to refuse to take the advertisement. The Post should be required to divulge who is paying the expenses of this litigation, particularly when the litigation serves no meaningful purpose other than to protect major advertisers of the defendant, including the GM Defendants and their counsel, Paul, Weiss.

In Person's other action against the Bar Association, Person v. The Association of the Bar of the City of New York, 75 C 1443 (JFT), in the Eastern District of New York, Person offered proof that the law firm representing the Bar Association, White & Case, and/or one of its top partners, Roger M. Blough, Esq., established The Business Roundtable, an unincorporated association of 158 major corporations, including GM and General Mills, Inc., which finances the defense of action in which none of the well-heeled 158 members is a party. Mr. Blough was President of U. S. Steel at the time, and head of The Business Roundtable after it was formed. It seems likely that this action is such an instance of third-party financing (which incidentally the

Post is valiantly trying to stop because it would be detrimental to the illegal best-interests of members of The Business Roundtable, from whom the Post obtain a substantial part of its advertising revenues, directly or indirectly (through subsidiaries or franchisees). If so, the combination and conspiracy seems to be broadening to the full extent alleged by plaintiffs at ¶ 10, p. 8 of the 2nd Amended Complaint:

> "... defendant The Association of the Bar of the City of New York and the Co-Conspirators have and now are engaged in a continuing unlawful combination or conspiracy unreasonably to restrain or monopolize trade and commerce (i) in the rendering and financing of legal and paralegal services for persons with antitrust claims or litigation arising under the nation's antitrust laws; and (ii) in other industries involving high concentrations of economic power through the scheme of making legal and paralegal services unavailable to smaller businesses and new entrants in the industries, in violation of § 1 of the Sherman Antitrust Act...."

I.

PLAINTIFF PERSON AND PLAINTIFF THEE ARE PRIVATE ATTORNEYS GENERAL UNDER FEDERAL LAW

Defendant claims that Person or both plaintiffs have no standing to assert their claims under the various federal statutes. But defendant fails to recall the concept of the "private attorney general", who are private persons seeking in court to enforce the federal antitrust laws as well as other federal laws. The concept of the "private attorney general" is "to encourage important policy enforcement". Hoitt v. Vitek, 495 F.2d 219 (1st Cir. 1974). Natural Resource Defense Council, Inc. v. Environmental Protection Agency, 484 F.2d 1331 (1st Cir. 1973) said:

> "... Recently the notion of spreading the litigation costs equitably among all the beneficiaries has been coupled with that of encouraging suits which promote the public interest.[1] (Note: 1. Some courts have drawn a sharp distinction between 'benefit' cases in which the suit serves the interests of a limited group, and 'private attorney general' cases in which the whole public is the beneficiary either because it receives a boon directly or because some 'strong public policy' is vindicated. See, e. g., La Raza Unida v. Volpe, 57 F.R.D. 94 (N.D.Cal. 1972) and cases cited therein.

Cf. Hall v. Cole, 412 U.S. 1, 5 n. 7, ... (1973). However, after Hall and Mills v. Electric Auto-Lite Co., 396 U.S. 375, 90 S.Ct. 616, 24 L.Ed.2d 593 (1970), the concept of 'benefit' includes any substantial improvement, financial or otherwise, provided to the beneficiary group. Whether that group is limited or includes the whole public should therefore ordinarily not affect the form of analysis." 484 F.2d 1333.

In Fairley v. Patterson, 493 F.2d 598 (5th Cir. 1974), the court said:

"The second supporting rationale, the private attorney general theory, is derived from the Supreme Court opinions in Newman v. Piggie Park Enterprises, Inc., supra; and Mills v. Electric Auto-Lite Co., supra, 396 U.S. at 389-397. The theory is that private plaintiffs have aided in effectuating important congressional and public policies. Attorneys' fees have not only been granted in suits brought under the Civil Rights Act ..., but also other various statutes...." 493 F.2d 606.

Alyeska Pipeline Service Company v. Wilderness Society, 95 S.Ct. 1612 (1975) held that attorneys' fees could not be paid under the private attorney general doctrine in absence of statutory authority. The court accepted the concept, without discussion, that a party itself (as distinguished from the party's attorney) is a private attorney general, as follows:

"...The Court of Appeals awarded attorneys' fees to respondents against petitioner ... based upon the Court's equitable powers and the theory that respondents were entitled to fees because they were performing the services of a 'private attorney general'" 95 S.Ct. 1614.

The opinion of the Supreme Court continued:

"...What Congress has done, however, while fully recognizing and accepting the general rule, is itself to make specific and explicit provisions for the allowance of attorneys' fees under selected statutes granting or protecting various federal rights. ... Under the antitrust laws, for instance, allowance of attorneys' fees to plaintiff awarded treble damages is mandatory." 95 S.Ct. 1623.

* * *

"It is true that under some, if not most, of the statutes providing for the allowance of reasonable fees, Congress has opted

> to rely heavily on private enforcement to implement public policy and to allow counsel fees so as to encourage private litigation. Fee-shifting in connection with treble damage awards under the antitrust laws is a prime example.... But congressional utilization of the private attorney general concept can in no sense be construed as a grant of authority to the Judiciary to jettison the traditional rule against nonstatutory allowances to the prevailing party and to award attorneys' fees whenever the courts deem the public policy furthered by a particular statute important enough to warrant the award.
>
> * * *
>
> (Footnote:) "39. Mr. Justice MARSHALL, post, after concluding that the federal courts have equitable power which can be used to create and implement a private attorney general rule, attempts to solve the problems of manageability which such a rule would necessarily raise. ... The dissenting opinion not only errs in finding authority in the courts to award attorneys' fees, without legislative guidance to those plaintiffs the courts are willing to recognize as private attorneys general, but also disserves that basis for fee-shifting by imposing a limiting condition characteristic of other justifications. ..." 95 SCt. 1625.

It is clear that Alyeska accepts the concept of the private attorney general, but only to the extent that Congress has identified the areas of federal interest in which the concept is to be applied. The Supreme Court has recognized that the prime example is in the antitrust field, because of the mandatory attorneys' fees to successful plaintiffs. The question of what other rights such private attorneys general may have does not appear to have been decided by the Supreme Court. Plaintiff is asking that this Court determine that he and co-plaintiff Thee have standing as private attorneys general to assert their claims against defendant, who is alleged to have conspired with Paul, Weiss and others to prevent plaintiffs from carrying out their law-enforcement activities in the Thee Action, and in violation of various federal laws, including the Sherman Act.

In light of the foregoing Preliminary Statement and legal discussion, plaintiffs seek to have Paul, Weiss disqualified and removed as attorneys for the Post in this action.

a trade association of liquor retailers for violation of § 1 of the Sherman Act. Buzzard, according to a tape recording, said to a price-cutting dealer:

> "Buzzard speaking: I'd like to be able to say, well, uh, I'd like for you to say let's figure on it. Let me talk to Crawford and uh, even Johnnie Mack and see if I could get a consensus with these gentlemen. That's all I want.
>
> * * *
>
> "Buzzard speaking: I'm just going to visit with you, perhaps, well, here't the deal. I told them not to be popping off about, uh, business, because I figured it would violate the anti-trust laws, but if anybody was going to do the popping off, I would.
>
> "Messer speaking: Uh, huh.
>
> "Buzzard speaking: And my problem, but I don't want my clients, so that's probably why I'm doing the talking." p. 69,608.

It seems quite possible or probable that Paul, Weiss has been communicating with the Post on behalf of GM and The Business Roundtable, in which GM is the No. 1 or No. 2 contributor of funds. If so, Paul, Weiss may be liable as an active participant in the alleged conspiracy or combination.

## IV.

## PLAINTIFF IS ENTITLED TO A CONTINUANCE (OR DENIAL) OF DEFENDANT'S MOTION FOR A PARTIAL SUMMARY JUDGMENT AND FOR AN ORDER PERMITTING DISCOVERY UNDER RULES 26 AND 56(f), F.R.CIV.P.

Rule 56(f), F.R.Civ.P., permits plaintiff to obtain discovery before having to have his antitrust claims tested by a motion for summary judgment. The rule states:

> "Rule 56. SUMMARY JUDGMENT
>
> "(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a

continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just."

As the Supreme Court stated in Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1962):

> "It may be that upon all of the evidence a jury would be with the respondents. But we cannot say on this record that 'it is quite clear what the truth is.' Certainly there is no conclusive evidence supporting the respondents' theory. We look at the record on summary judgment in the light most favorable to Poller, the party opposing the motion, and conclude here that it should not have been granted. We believe that summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, and proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.'"

The accompanying Person affidavit clearly shows plaintiff's need to obtain discovery to justify his opposition to defendant's motion for (partial) summary judgment. Plaintiff needs this discovery to prove the existence of the alleged conspiracy to restrain trade, and that the Post and its attorneys and others are active members of the conspiracy. Plaintiff should be given the opportunity to obtain evidence about the alleged antitrust conspiracy from the persons who know about it —the Post and its attorneys, and others.

## V.

## PLAINTIFFS HAVE STANDING TO ASSERT THEIR CLAIMS UNDER THE SECURITIES LAWS

The standing of each of the plaintiffs to assert his claims under each of the securities laws in question will be treated below, together with

Act was enacted to prevent. Also, the Post's activities were intertwined with fraud, through its failure to disclose to plaintiffs the inaccuracy of their advertised willingness to accept financial advertising and normal acceptance and publication of tombstone advertisements, and through the Post's tombstone selection policy without full disclosure to its readers that the Post is screening tombstone advertisements (and not letting its readers see all the offerings which desire to publish tombstone advertisements) for the purpose of maximizing the Post's profits by protecting major advertisers of the Post from the competition in business and in the courts which could be expected if plaintiffs were able to publish their tombstone advertisement in the Post. The public is being defrauded by this scheme and artifice, and the Post should not be allowed to steal from the public any more, in this way. The Post should not be able, unilaterally, to repeal the complicated securities laws enacted to protect the allocation of capital in this country and, through full disclosure, allocate capital on a competitive basis.

Before a more specific analysis of plaintiffs' damages and their standing, it seems important to set forth plaintiffs' assertions that Person is a "political litigator" and entitled to various First Amendment Freedoms.

VII.

A DEFINITION OF "POLITICAL LITIGATION"

Person maintains in this and other actions that he is a "political litigator" and, as such, that he is entitled to various First Amendment freedoms, including the right to petition the courts and agencies for a redress of grievances; the correlative right of access to the courts; the right of assembly with clients to engage in politically expressive litigation; and the correlative right to engage in political litigation as much as if

such activities were activities in connection with a lawful political party; the right of speech, to the extent connected with the other freedoms, including the right to advertise and solicit persons who have need of Person's services in the area of politically-expressive or political litigation.

Politically-expressive or political litigation is recognized in NAACP v. Button, supra, in which the United States Supreme Court recognized that litigation may well be the most effective (and perhaps only) way that members of minority groups may achieve political objectives. Person asserts that the NAACP alone should not be entitled to 1st (and 14th) Amendment rights to engage in political litigation, permitting the other 1st (and 14th) Amendment righ described in the preceding paragraph. All of us are members of many minority groups, outside of purely ethnic or religious (as to which each of us is also a minority member, depending on how fine a group is described). Accordingly, a minority group may be better defined by those seeking change from the present rules or laws, as to which those supportive of existing laws and rules are in the majority and those opposing such rules and laws are members of the "minority group" for such purposes. Thus, many members of the NAACP belong to the majority group in certain political areas being litigated by the NAACP and many members of the racial and ethnic majority in the country (particularly the poor) may well fall within the group for whose benefit the NAACP purports to litigate politically. In other words, the NAACP has no monopoly on political litigation, and should not stand alone in having First Amendment protections. In effect, we should be protecting the right to assert ideas on behalf of those seeking change, rather than to provide First Amendment protections to a formal organization, with the obvious conflicts of interest as to subdivisions of the organization. Such

protection for the idea and the process of implementation of the idea is totally consistent with the First Amendment, and much more logical. Political parties (meaning, essentially, the two major parties) should not be the only constitutionally-protected way in which political change can be created. As the Supreme Court has said, the courts may well be the only practical way for a member of the minority to achieve political change. An individual, such as Person, should have the First Amendment freedoms to work for change, as well.

Various types of litigation seem to fall within the ambit of "politically-expressive litigation" or "political litigation", which Person uses interchangeably. First, constitutional litigation, either federal or state. Secondly, civil rights actions under §§ 1983, 1985 and 1986, 42 U.S.C., to enforce the constitutional rights against persons (such as the Post) who would deprive a person of such rights; as to such rights, see the section below on injury to plaintiffs; and Thirdly, to enforce the existing law when agencies of government charged with such enforcement fail to act, especially in the areas of antitrust, securities, civil rights and immigration law.

It is interesting to note that the fields of law listed under the 3rd point above have governmental attorneys assigned to enforce the law (units of the Justice Department - hence Person's designation of his activities as a "private justice department" - or the Securities and Exchange Commission). Other areas could be included, possibly, but would not necessarily have to be. These areas seem to tie in to the "private attorney general" concept, as well.

The reason for the private remedy in these areas is that the duty of the government lawyers to enforce the law is discretionary, because

of the difficulties in understanding some of the violations, the political pressures put on the regulators or the persons who supervise such regulators, the lack of sufficient funds to litigate all meritorious matters, the basis on which regulators select cases to litigate (overall policy rather than to recover money for an injured individual), the unwillingness and practical impossibility of salaried attorneys who expect to leave their position within several years to conduct some types of massive (particularly antitrust) litigation as effectively as private attorneys who have the incentive of hourly fees for work performed or a contingent fee in the event of success.

Accordingly, if the Congressional intent in the enactment of these politically enforced laws is to be effectuated, it is necessary to let the private litigation and his attorney enforce such laws, as private attorneys general, with the First Amendment freedoms available to them which are available to persons in the main stream of politics and political parties (the same persons who ultimately decide how much enforcement of these statutes there will be, as a political decision).

The same protections are not needed in fields of litigation such as negligence, matrimonial and breach of contract, for example, where the government does not maintain offices and personnel to attempt to enforce such laws through the executive branch of government or through an independent agency of government. Accordingly, there is a definite limit on the scope and limitations of political litigation, and a justiciable standard which can be applied. The standard could be defined, possibly by reference to the federal statutes under which an award of attorneys' fees to a victorious plaintiff is (i) mandatory, or (ii) permissive or mandatory. See discussion at pp. 10-12 above.

VIII.

PLAINTIFFS' INJURIES AND STANDING TO SUE

The question of plaintiffs' "standing to sue" is tied in to the issue of injuries suffered by plaintiffs. The Advisers Act was designed to stop certain practices, including fraud, and distortion and manipulation of the capital markets, among other practices. The Act has been construed to intend that such practices be stopped by the creation of a right to bring a private action, for damages and injunctive relief, by persons injured as a result of violations of the Act. Most of the cases relate to fraudulent activities under § 206, but other violations of the Advisers Act are actionable as well, including violations of § 203 (see pp. 20 and 26 above). The courts have construed that the persons protected include the class of persons whom the statute was enacted to protect, which includes persons who would be foreseeably injured by a willful (perhaps non-willful violation of the Act. This construction maximizes the efficacy of the Act, in accordance with the Second Circuit's opinions. Accordingly, plaintiffs have standing to sue for injunctive relief and damages because of the following injuries to them reasonably foreseeable by the Post when it willfully violated various sections (203, 206 and 208d) of the Advisers Act:

A. AS TO PLAINTIFF THEE

I. FOR INJUNCTIVE RELIEF UNDER §§ 203, 206 and 208(d):

1. Destruction or substantial impairment of Thee's First Amendment rights to:

(a) petition the courts and have meaningful access to the courts;

(b) engage in politically-expressive litigation;

(c) assemble with Person, Prentiss and others to engage in

politically-expressive litigation;

(d) have Person, Prentiss and other attorneys inform Thee of his legal rights under Thee's constitutional right to know; a right inhibited by defendant's activities in interfering with Thee's attorneys' activities on Thee's behalf; and

(e) related freedom of speech;

all as more fully described at pp. 32-35 above, under "A Definition of 'Political Litigation'");

2. Destruction or substantial impairment of Thee's Fourteenth Amendment rights to due process* in the prosecution of his Thee Action, wherein due process* is being denied because of the defendant's interference with plaintiffs' attempts to properly finance the Thee Action;

3. Destruction or substantial impairment of Thee's rights to enforce the Sherman Act alone or with his attorneys as "private attorneys general" and effective interference with their activities as "private attorneys general" (see pp. 10-12 above);

4. Destruction or substantial impairment of Thee's statutory and commonlaw rights, as a citizen, resident and client of Person, to commence, finance and maintain meritorious lawsuits of any kind, with his attorneys or on a pro se basis;

5. Destruction or substantial impairment of Thee's statutory rights under the Securities Act of 1933 to raise capital publicly;

---

* And equal protection of the laws.

II. FOR DAMAGES UNDER §§ 203, 206 and 208(d):

6. Expenses and liability for expenses incurred, and the value of the time spent by Thee and his attorneys, in connection with their efforts to market shares in the Thee Action, including the value of legal services rendered by Person and Prentiss; filing fees; typesetting and printing costs; tombstone advertising expenses; telephone and travel expenses; postage; xeroxing and stationery expenses; and other miscellaneous expenses; amounting to $40,000, to be apportioned between the plaintiffs as their respective interests may appear;

7. Loss of the financing needed to pursue Thee's Action, amounting to $30,000 or more per year for an estimated 5 years (6% of $500,000 for 5 years), amounting to $150,000 or more;

8. Loss of the actual value of the Thee Action pursued to final judgment, if properly financed with $30,000 or more per year, amounting to more than $10,000,000, to be proven with certainty at the time of trial (which element of damages includes the amounts described in ¶¶ 5-6 above);

9. Loss of monetary value of injunctive relief sought by Thee in his Thee Action against General Mills, et al., preventing him from pursuing his business as an independent game designer and developer, including the business benefits reasonably anticipated from winning his lawsuits; amounting to more than $10,000,000, to be proven with certainty at the time of trial);

B. AS TO PLAINTIFF PERSON

I. FOR INJUNCTIVE RELIEF UNDER §§ 203, 206 and 208(d):

10. Destruction or substantial impairment of Person's First Amendment rights to:

(a) petition the courts and have meaningful access to the courts on behalf of clients, including Thee; the lack of proper financing of antitrust litigation prevents Person from rendering the best quality of legal services to his clients and is destructive of Person's antitrust litigation practice because of the added overhead and other expenses he must incur which are not reimbursed in the short run by the client, thereby requiring that Person have substantial capital of his own before he can achieve any success for his clients in the field of antitrust litigation);

(b) to engage in politically-expressive litigation;

(c) to engage in the activities described as a "private justice department" on behalf of himself, pro se, and on behalf of clients, such as Thee;

(d) to assemble with others (including Thee and the Nabcor Plaintiffs) to engage in politically-expressive litigation and pursue his private justice department activities;

(e) inform prospective clients, including Thee, of their legal rights in the area of politically-expressive litigation; and

(f) related freedom of speech;

all as more fully described at pp. 32-35 above, under "A Definition of 'Political Litigation'") and at pp. 10-12 above, under "Plaintiff Person and Plaintiff Thee Are Private Attorneys General under Federal Law" (see ¶ I-1 above);

11. Destruction or substantial impairment of Person's Fourteenth Amendment rights to due process* in his prosecution of the Thee Action, on Thee's behalf, for a contingent legal fee, wherein due process* is being denied to plaintiffs because of the defendant's interference with their attempts to properly finance the Thee Action (see ¶ I-2 above);

12. Destruction or substantial impairment of Person's rights to enforce the Sherman Act together with, and on behalf of, Thee as "private attorneys general" and effective interference with their activities as "private attorneys general" (see pp. 10-12 above) (also see ¶ I-3 above);

13. Destruction or substantial impairment of Person's statutory and commonlaw rights, as a citizen, resident and member of the bar in New York, to commence, finance and maintain meritorious lawsuits of any kind, on behalf of clients, such as Thee, and on a pro se basis (see ¶ I-4 above);

14. Destruction or substantial impairment of Person's statutory rights under the New York Judiciary Law and under the Securities Act of 1933 to raise capital publicly for clients or for activities in which Person has an economic interest (the Thee Action) (see ¶ I-5 above);

II. FOR DAMAGES UNDER §§ 203, 206 and 208(d):

15. The expenses and liability for expenses incurred, as described in ¶ 6 at p. 38 above, to be apportioned between the plaintiffs as their respective interests may appear (see ¶ I-6 above);

16. Expenses and liability for expenses incurred, and the value of time and legal services spent by Person, in connection with his



* And equal protection of the laws.

lawsuit against the Bar Association and others to establish the right of Person and his clients to sell shares in lawsuits;

17. Expenses and liability for expenses incurred, and the value of time and legal services spent by Person, in connection with lawsuits and prospective lawsuits in which he represents clients who, at the date of defendant's refusal, planned to make public offerings of securities in their lawsuits;

18. Loss of the financing needed to pursue Thee's Action, amounting to $30,000 or more per year for an estimated 5 years (6% of $500,000 for 5 years), which would have been received by Person as Trustee, amounting to $150,000 or more (see ¶ I-7);

19. The value of Person's contingent fee of 35% in the Thee Action applied to the loss of actual value of the Thee Action pursued to final judgment, if properly financed with $30,000 or more per year, amounting to more than $3,500,000, to be proven with certainty at the time of trial, which element of damages includes the amounts described in ¶¶ 15 and 18 above (see ¶ I-8); and

20. Loss of legal fees, contingent and non-contingent, and related business income from rendering of paralegal services, resulting from Person's inability to establish immediately and before substantial competition enters, his chosen professional and business field of political litigation, as a private justice department for profit, amounting to more than $35,000,000, to be proven with certainty at the time of trial (see ¶ I-9).

Defendant's activities are destructive of competition in the securities markets, and result in misallocation of capital contrary to the purposes of the securities acts, including the Advisers Act. The result is that defendant's activities in violation of the Advisers Acts will help to build and perpetuate monopolies and misuse of capital, increase excessive profits and inflation, and result in a decline of business opportunity for all but the monopolists, and result in a reduction in new and improved products and services. Defendant's only justification for these violations of law is "business judgment", which plaintiffs assert is not a valid defense.

As a result of the foregoing injuries to plaintiffs, they have standing to recover monetary damages as well as to obtain injunctive relief under the Advisers Act. Although the complaint does not in such words specifically allege that the plaintiffs 'were defrauded out of substantial sums of money by ... the defendant ... their investment advisor,' (p. 15 of defendant's memorandum), plaintiffs were so defrauded as stated above and seek leave to file a clarifying amendment. The other Investment Advisers Act violations, under §§ 203, 206(4) (deceptive, manipulative) and 208(d), as well as the allegations that plaintiffs were injured as a result of the fraud practiced by the Post on its readers, § 206(1,3,4), appear to be well pleaded. Plaintiffs have never limited their claimed violations to § 206 as defendant would have the Court believe.

To the extent the rule for damages under the antifraud provisions in § 206 parallel the measure for Rule 10b-5 actions, as suggested by the court in Abrahamson v. Fleschner, 392 F.Supp. 740 (S.D.N.Y. 1975), at 750, i.e., out-of-pocket expenses only, plaintiffs allege a substantial amount of such out-of-pocket expenses (¶¶ 6 and 15 above, at pp. 38 and 40). The

court in Courtland v. Walston & Co., Inc., 340 F.Supp. 1076 (S.D.N.Y. 1972) held at p. 1093 that an adequate measure of damages would be one "based on the monetary loss actually and proximately resulting from the acts complained of", which plaintiffs claim entitles them to most if not all of the other elements of damage alleged above.

To the extent that recovery is conditioned upon showing that plaintiffs purchasers from defendant, the statute would be read too narrowly, to effectuate the legislative intent, at least when private attorneys general bring the action. The defendant's violations of federal securities law is causing plaintiffs injuries based on violations of other federal laws by other persons, directly resulting from defendant's violations of law. The "aborted seller" rationale of Stockwell v. Reynolds & Co., 252 F.Supp. 215 (S.D.N.Y. 1965) should be applied. See Abrahamson at p. 748.

IX.

PLAINTIFFS HAVE STANDING AND A CLAIM UNDER THE SECURITIES ACT OF 1933

Plaintiffs claims under the Securities Act of 1933 are not limited to alleged violations of §§ 5, 12 and 17, as claimed by defendant. The claims are based on a construction of various sections, which seem to give plaintiffs a sound basis for injunctive relief and damages, as follows:

I. PLAINTIFFS' RIGHT TO INJUNCTIVE RELIEF:

1. § 22(a) gives the "district courts ... jurisdiction ... concurrent with the State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this title."

Inasmuch as plaintiffs do have standing and they have stated a claim under § 1985(2), plaintiffs have stated a claim and have standing under § 1986.

XVI.

PERSON HAS STANDING TO SUE ON THE SHERMAN ACT, § 1 CLAIM

Person's injuries are set forth above at pp. 39-41, and summarized briefly in the complaint, ¶ 15-17. Thus, Person has alleged that he sought to publish a tombstone on his own behalf as well as on behalf of Thee. Person, as Trustee, was to receive the proceeds of the offering. See copy of Offering Circular annexed as an exhibit to the complaint.

XVII.

PLAINTIFFS STATE A § 2, SHERMAN ACT CLAIM

Plaintiffs allege that there are "co-conspirator newspapers" (¶ 9), who are carrying out the common practice of refusing non-tombstone ad offered by persons who would compete with the major corporate advertisers (¶ 9); also, plaintiffs allege that "defendant is aware that the co-conspirators have similar policies and defendant has combined and conspired with these co-conspirators, including all or virtually all of the other major daily newspapers in New York City, to prevent capital from being raised by persons such as plaintiffs and Person's other clients in competition with or against the best interests of the major corporations which advertise (or may advertise) in their newspapers, or the major corporations which in fact own most of the major daily newspapers in New York City." (¶ 10). Also, plaintiffs alleged that "This conspiracy is part of and in furtherance of the conspiracy alleged in Person's action against" the Bar Association, etc. (¶ 10). Plaintiffs' relevant market referred to "major daily and Sunday newspapers having at least 50% of their circulation in New York City which

are suitable for publication of tombstone advertising" (¶ 13). Plaintiffs believe they have alleged a § 2 claim. Plaintiffs alleged that "No major daily newspaper in New York City suitable for publication of the tombstone advertisement would take the offered advertisement." This amounts to 100% of the alleged relevant market in ¶ 13 and, therefore, is an allegation of monopoly or market domination. Each of such newspapers was "designated as co-conspirators of defendant" in ¶ 8 of the complaint.

XVIII.

DEFENDANT'S MOTION FOR (PARTIAL) SUMMARY JUDGMENT AS TO PLAINTIFFS' § 1, SHERMAN ACT CLAIMS SHOULD BE DENIED OR CONTINUED

See pp. 17-18 above, for a discussion of plaintiffs' entitlement to discovery under Rules 26 and 56(f), F.R.Civ.P. Plaintiffs have alleged a conspiracy in their complaint and need discovery to obtain evidence sufficient to justify their opposition to defendant's motion. Also, see pp. 1-10 and 13-17 for a discussion of some of the facts on which plaintiffs base their conspiracy allegations.

XIX.

CONCLUSION

For the reasons set forth above, this Court should by Order:

1. Disqualify and remove Messrs. Paul, Weiss, Rifkind, Wharton & Garrison as attorneys for defendant in this action;

2. Permit plaintiffs to obtain discovery under Rule 26 (or, if that is inappropriate, under Rule 56f) and grant a continuance of defendant's motion for (partial) summary judgment (as to the § 1, Sherman Act claims);

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- :

NEW YORK POST CORPORATION, :

Defendant :

- - - - - - - - - - - - - - - - - - - - - - x

76 C 1217 (ERN)

AFFIDAVIT

STATE OF NEW YORK )
) SS.:
COUNTY OF NEW YORK )

MORRIS B. ABRAM, first being duly sworn, deposes and says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison, attorneys for the New York Post Corporation, (the "Post"). I make this affidavit in further support of the Post's motion for summary judgment on the restraint of trade claim.

The Material Facts Necessary to Decide This Motion Are Not In Dispute

2. The material facts necessary to decide this motion are simple and uncontroverted:

a. LeLong, the Post's salesman, and Goldreyer, the Post's Financial Advertising Director, alone and without discussing the issue with anyone else, decided in the exercise of their independent business judgment to decline to accept and publish the Thee tombstone advertisement.

b. Neither LeLong, Goldreyer, Brody, the Post Advertising Director, nor Greenberg, the Post General Manager, has ever

(1) been told to accept or reject tombstone advertisements for publication in the Post on the basis of the identity of the security's issuer or seller;

(2) told anyone to accept or reject tombstone advertisements for publication in the Post on the basis of the identity of the security's issuer or seller;

(3) accepted or rejected tombstone advertisements for publication in the Post on the basis of the identity of the security's issuer or seller; or

(4) discussed with anyone by letter, telephone, personal meeting or other means of communication accepting or rejecting tombstone advertisements in any publication on the basis of the identity of the security's issuer or seller.

3. Greenberg, Brody, Goldreyer and LeLong have sworn to this in affidavits dated August 17, 1976.

4. Plaintiffs point to no alleged facts in their complaint, affidavits or 9(g) statement which casts even a shadow of a doubt on the veracity of the account given by the Post's employees.

5. In opposition to our motion, plaintiffs simply say that they have no facts to offer this Court. This is true, because the facts are as we have stated in our affidavits: The Post acted unilaterally in its decision not to accept and publish Thee's tombstone advertisement.

## Plaintiffs Are Not Entitled to Any Discovery

6. Plaintiffs may not go on a fishing expedition hoping to find some evidence which will salvage their group boycott claim based solely upon their unsupported, speculative, irrelevant and mendacious 9(g) statement.

7. Plaintiffs claim that "most of the essential facts needed by plaintiffs to prove their claims are known only to defendant, its co-conspirators and perhaps others." Person Affidavit dated September 7, 1976, ¶2. Plaintiffs seek to provide the facts essential to justify plaintiffs' opposition to defendant's motion." Id.

8. This they may not do.

9. In order to resist a motion for summary judgment under Rule 56(f), the plaintiffs must by affidavit do more than they have done here. Rule 56(f) requires that plaintiffs' affidavit

> In addition to pointing out the facts that are largely or exclusively within the control of defendants, it should describe plaintiffs' attempts to secure these facts. It should set forth what facts are exclusively within defendants' knowledge, as opposed to those only largely within their knowledge, and why affiant has been unable to obtain those facts not exclusively within defendants' knowledge. It should contain the knowledge or information the plaintiffs have warranting or justifying the affiant's belief.

School Board v. Richardson, 332 F.Supp. 1263, 1269 (N.D. Fla., 1971); Accord: Schultz v. Manufacturers of Traders Trust Co., 30 F.Supp. 443 (W.D.N.Y., 1939).

10. Plaintiffs by affidavit point to no relevant facts exclusively within the knowledge of the defendant by which they can establish their claim. Instead they offer an unsworn 9(g) statement based upon some unknown and unstated information and belief which sets forth speculations, conclusions and irrelevancies but not alleged facts subject to Rule 56(f) discovery.

11. "The office of a...complaint is to seek redress for a wrong, not to find one" Lewis v. Varnes, 368 F.Supp. 45, 47 (S.D.N.Y.) aff'd 505 F.2d 785 (2d Cir., 1975). But plaintiffs ignore this and seek to harass the Post through discovery in an attempt to find some fact that will postpone judgment day for a few more hours.

12. "[D]iscovery...udner Rule 56(f) is unwarranted... where it is clear that it would not be directed at filling a specific evidentiary gap, but rather would consist of blind grouping, undertaken in the hope of finding something to which this suit can be anchored." Searer v. West Michigan Telecasters, Inc., 381 F.Supp. 634 (W.D. Mich., 1974) aff'd 524 F.2d 1406 (6th Cir., 1975).

13. Yet, without so much as a line of legal authority, plaintiffs ask that this Court allow them to embark upon such "blind grouping" and subject the Post to further inconvenience and expense through the discovery process.

14. Plaintiffs may not prolong this proceeding. They have no facts by which to oppose this motion because there are none. They may not first file a complaint and then go looking through the discovery process for facts to support their conclusory allegations. Segal v. Gordon, 467 F.2d 602, 609 (2d Cir., 1972). Clearly, plaintiffs are not entitled to any discovery under any Federal rule.

This Court Should
Grant the Post
Summary Judgment

15. The alleged relevant "facts" upon which plaintiffs base their group boycott claim are

a. A number of publications declined to publish Thee's tombstone; and

b. The Post declined to publish Thee's tombstone.

16. In our earlier affidavits we have unequivocally stated that the Post acted unilaterally with respect to Thee's tombstone advertisement. We also demonstrated by clear legal authority that paralled conduct alone is insufficient to support a finding in a group boycott. This stands unrebutted.

17. As we promised the Court in August, if plaintiffs could offer this Court an alleged "fact" which allegedly supports their claim, we would be happy to deal with it.

18. Plaintiffs now say that they have an alleged "fact," but that "fact" does not support their claim. In ¶40 of their 9(g) statements, plaintiffs assert that they intend to prove that Daniel L. Lionel and Mortimer W. Hall are employees of the Post and directors of the Better Business Bureau of Metropolitan New York, Inc. Further, plaintiffs say they will prove that the Better Business Bureau directors, including Lionel and Hall on behalf of the Post, have conspired amongst themselves to set some undisclosed advertising acceptability standards which adversely affect the plaintiffs.

19. The "offer of proof" apparently is in support of plaintiffs' allegations of a group boycott.

20. The Greenberg affidavit dated September 16, 1975 demonstrates the utter falacy of this "fact" plaintiffs intend to prove: The Post has not been a member of the Better Business Bureau since 1971. Mr. Lionel has not been an employee of the Post since 1967, Mr. Hall since 1970.

21. Putting aside the plaintiffs speculative, conclusory and argumentative allegations, we have a nucleus of simple, uncontroverted facts upon which this motion should be determined. All these facts and the applicable law, as we have demonstrated, can only support a finding that the Post acted alone and accordingly, the Court should enter a judgment dismissing the restraint of trade claim.

Mo[illegible]s B. Abram

Sworn to before me this
16th day of September, 1976.

William B. Pollard

Notary Public

WILLIAM B. POLLARD III
Notary Public, State of New York
No. 31-4616545
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - -x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- :

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - -x

76 C 1217 (ERN)

AFFIDAVIT

STATE OF NEW YORK )
) SS.:
COUNTY OF NEW YORK )

BYRON S. GREENBERG, first being duly sworn deposes and says:

1. I am the General Manager and an officer and director of the New York Post Corporation ("Post"). I make this affidavit in further support of the Post's motion for summary judgment on plaintiffs' restraint of trade claim.

2. In paragraph 40 of plaintiffs' 9(g) statement, they allege that Daniel L. Lionel and Mortimer W. Hall are employees of the Post and directors of the Better Business Bureau of Metropolitan New York, Inc. They further allege that the directors of the Better Business Bureau have determined certain advertising acceptability standards which adversely effect them, and that Messrs. Lionel and Hall, on behalf of the Post, have participated in determining these standards.

3. The allegations in paragraph 40 are false.

4. Mr. Lionel terminated his employment with the Post on June 21, 1967.

5. Mr. Hall terminated his active employment with the Post on December 31, 1970 and his pro forma association on January 27, 1975.

6. The Post resigned as a member of the Better Business Bureau on December 31, 1971.

Byron S. Greenberg

Sworn to before me this
16th day of September, 1976.

Stephen P. Linsey

Notary Public

STEPHEN P. LINSEY
Notary Public, State of New York
No. 03-4504739
Qualified in Bronx County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - - -x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, : 76 C 1217 (ERN)

-against- :

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - - -x

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT AND FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION, DISCOVERY AND ATTORNEY FEES

## Preliminary Statement

Plaintiffs' answering papers are long on argument but short on legal authority. Ignoring the substantial and meritorious legal arguments set forth in the Post's August Brief, plaintiffs offer this Court conclusory, speculative, mendacious and libelous assertions in support of their futile attempt to contrive a viable claim against the Post.

This litigation is about the Post's unilateral refusal to accept and publish Thee's tombstone advertisement.

This litigation is not about NABCOR v. General Motors, Person v. The Association of the Bar, Person's law practice or any other such smoke screens.

The substantive motions before this Court demonstrate that the plaintiffs do not have standing to sue and have failed to state claims upon which relief can be granted under the securities law, the civil rights laws and the antitrust laws. In addition, the Post should be granted summary judgment on the restraint of trade claim. Accordingly, the complaint should be dismissed.

## I

## PLAINTIFFS' LACK OF STANDING TO SUE ON THE SECURITIES FRAUD CLAIM

Plaintiffs simply have no standing to sue on the alleged securities fraud claims.

The compliant is devoid of any allegation of injury sustained by either Person or Thee attributable to any alleged conduct of the Post that allegedly violated the securities law. To have standing, the Constitution requires that there be a case or controversy between the plaintiff and defendant. See Defendant's August Brief at pp. 9-11. As an element of the case or controversy requirement, each plaintiff must have suffered some

not have. In addition, the complaint does not allege that either plaintiff has suffered any injury attributable to the non-alleged abuse of the non-alleged monopoly power of the Post.

Simply put, plaintiffs have not stated a claim under §2 of the Sherman Act. Defendant's August Brief at pp. 34-35.

Accordingly, to the extent the complaint does plead a cause of action under §2, it should be dismissed for failure to state a claim upon which relief can be granted.

## IX

## THE POST SHOULD BE GRANTED SUMMARY JUDGMENT ON THEE'S RESTRAINT OF TRADE CLAIM

For the reasons set forth in the affidavits of Morris B. Abram dated August 17, 1975 and September 16, 1975, this Court should deny plaintiffs' motion for discovery and grant the Post's motion for summary judgment on the restraint of trade claims.

## X

## CONCLUSION

For the reasons set forth above, this Court should:

1. Deny plaintiffs' motion to take discovery but grant the Post's summary judgment on the Section 1 Sherman Act claims;

2. Dismiss all other claims on the grounds that plaintiffs lack standing to sue, have failed to state a claim upon which relief can be granted, and have failed to plead fraud with particularity;

3. Deny plaintiffs' application for a preliminary injunction;

4. Deny plaintiffs' motion for their attorneys' fees but tax plaintiffs the Post attorneys' fees for bringing a totally frivolous securities suit without any merit; and

5. Grant such other and further relief this Court believes just, proper and equitable.

Dated: New York, New York
September 16, 1976

Respectfully submitted,

PAUL, WEISS, RIFKING, WHARTON
& GARRISON
345 Park Avenue
New York, New York 10022
Telephone: 212 644-8000
Attorneys for the New York Post
Corporation

Morris B. Abram
William B. Pollard
Jonathan H. Sinnreich

Of Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - - - x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- :

NEW YORK POST CORPORATION, :

Defendant. :

- - - - - - - - - - - - - - - - - - - - - - x

76 C 1217 (ERN)

ORDER

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
SEP 23 1976
TIME A.M.....
P.M.....

IT IS HEREBY ORDERED THAT:

1. The return date for plaintiffs' motion for a prelimianry injunction, discovery and attorneys' fees and defendant's motion to dismiss the complaint, for summary judgment and attorneys' fees is adjourned from September 20, 1976 to September 29, 1976, at 2:00 P.M., before the Honorable Edward R. Neaher, at the United States Courthouse for the Eastern District of New York, Brooklyn, New York;

2. Plaintiffs' motion to disqualify the firm of Paul, Weiss, Rifkind, Wharton & Garrison as counsel for the defendant, is adjourned pending further order of this Court.

Edward R. Neaher

Edward R. Neaher
U.S.D.J.

Brooklyn, New York
September 23, 1976

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- :

76 C 1217

NEW YORK POST CORPORATION, :

Defendant. : MEMORANDUM AND ORDER

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APPEARANCES:

CARL E. PERSON, ESQ.
Plaintiff, pro se

RICHARD J. PRENTISS, JR., ESQ.
Attorney for Plaintiff Christian Thee

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
Attorneys for Defendant
By MORRIS B. ABRAM, ESQ. and
WILLIAM B. POLLARD, III, ESQ.

NEAHER, District Judge.

This federal action arises out of plaintiffs' unsuccessful effort to publish a "tombstone advertisement," that is, a brief announcement of a securities offering, in a major New York daily newspaper, the defendant New York Post Corporation (the "Post"). The case is presently before the court on (1) plaintiffs' motion for a preliminary injunction requiring the Post to publish their advertisement or to

refrain from publishing all tombstone advertisements, and (2) on defendant's motions for dismissal of various claims in the complaint and for summary judgment on antitrust claims alleged therein. For the reasons which follow, plaintiffs' motion is denied and defendant's motions are granted.

On June 22, 1976 Person submitted the tombstone advertisement for the proposed offering with a copy of the offering circular to the Post, among other widely read New York newspapers and magazines.[1] The Post and other newspapers rejected the advertisement,[2] allegedly as not being suitable for their readers. Thereafter plaintiffs brought this action only against the Post, alleging causes of action under the securities, civil rights and antitrust laws as more fully described below.

The thrust of the complaint, briefly stated, is that the officers, employees, attorneys and others of the Post have conspired together, and the Post has conspired with the other major newspapers, to screen proposed securities offerings and to publish only those meeting their standards of investment suitability. This selective publication policy allegedly favors major corporations and governmental agencies, prevents small businesses and

persons such as plaintiffs from raising capital and consequently threatens the free enterprise system. As part of this editorial policy, the Post allegedly selectively publishes tombstone ads and slants news stories in favor of corporations who are, presently or prospectively, large advertisers. The public, it is asserted, has no knowledge of this deceptive editorial policy.

Preliminary Injunction Motion

Plaintiffs' motion for a preliminary injunction runs squarely against the wall of freedom of the press. Couching the requested restraint in terms of a ban on discriminatory tombstone advertising renders it no less a restraint. A court may no more tell a privately owned newspaper what not to print than what to print. Miami Herald Publishing Company v. Tornillo, 418 U.S. 241 (1974). That commercial advertising is involved makes no difference. As the Court pointed out in Miami Herald,

> "A newspaper is more than a passive receptacle or conduit for news, comment and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment.

> It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time." Id. at 258 (footnote omitted and emphasis supplied).

Essentially, plaintiffs' claims are no different from those rejected in Chicago Joint Board, Amalgamated Clothing Workers of America, AFL-CIO v. Chicago Tribune Co., 435 F.2d 470 (7 Cir. 1970). In that case it was urged that "if a newspaper accepts any editorial advertising it must publish all lawful editorial advertisements tendered to it for publication at its established rates." Id. at 478. There a labor union sought access to four newspapers controlled by defendant Chicago Tribune for union advertisements explaining a campaign against imported clothing sold by Marshall Field & Co., a large advertiser in such newspapers. In affirming summary judgment against the union the court pointed out:

> "The Union's right to free speech does not give it the right to make use of the defendants' printing presses and distribution systems without defendants' consent." Id.

Like plaintiffs here, the union stressed the public interest which may be affected. Nonetheless the court

added:

> "We glean nothing from the constitutional guarantees, or from the decisions expository thereof, which suggests that the advertising pages of a privately published newspaper may so be pressed into service against the publisher's will either in the context of a labor dispute to which the publisher is not a party or otherwise." Id.

In that state of the law there is no likelihood of success on the merits and plaintiffs' motion for a preliminary injunction must be denied.[3]

Dismissal Motion

In a patent attempt to circumvent the Post's first amendment freedom, plaintiffs seek to restrain and hold the Post liable as a violator of securities regulation and civil rights statutes because of its refusal to publish the tombstone ad. Defendant has moved to dismiss such claims under Rule 12, F.R.Civ.P., on grounds that (1) plaintiffs fail to state claims upon which relief can be granted, and (2) plaintiffs in any event lack standing to assert them.

Since the standing issue pervades five separate claims to which defendant's motion is directed, some preliminary discussion of plaintiffs' theory of their right to sue is in order. Characterizing himself as a "political

litigator," plaintiff Person maintains he has standing as a private attorney general engaged in activities to enforce federal laws.[4] Similarly, plaintiff Thee, who is pursuing an antitrust suit against General Mills,[5] urges that he too derives standing as a private attorney general. Person describes political litigation as private litigation to enforce constitutional and civil rights and federal statutes when the government fails or, in its discretion, declines to act. He argues that private attorneys general must be able to maintain such actions on their own to effectuate Congressional intent in enactment of those laws, and that courts have recognized the concept of the private attorney general to encourage important policy enforcement.

However that may be, courts have also recognized that no matter how imperative is the public interest sought to be vindicated, a plaintiff, in order to have standing to sue, must demonstrate more than abstract concern. Warth v. Seldin, 422 U.S. 490 (1975). It is fundamental that, assuming justiciability of the claim, the constitutional limitations of federal court jurisdiction imposed by Article III require a plaintiff to demonstrate some concrete injury to himself, likely to be redressed by a favorable decision. Simon v.

Eastern Kentucky Welfare Rights Organization, ___ U.S. ___, 96 S.Ct. 1917, 1924 (1976). See Warth v. Seldin, supra; O'Shea v. Littleton, 414 U.S. 488 (1974); Sierra Club v. Morton, 405 U.S. 727 (1972). A private litigant, in order to have standing to sue, must have a personal stake in the outcome of the action. His personal desire to act as a surrogate for governmental action is no substitute.

With those considerations in mind we turn to an analysis of plaintiffs' several claims to determine whether claims for relief are stated and whether plaintiffs have met the test of standing.

1. Investment Advisers Act

Plaintiffs first claim that the Post's refusal to publish Thee's tombstone ad evidences a policy of selective publication of tombstone ads based on its evaluation of the merits of a proposed offering. Those ads the Post publishes, they allege, are for securities it recommends to its readers for purchase. According to plaintiffs this places the Post in the position of an undisclosed investment adviser, which has violated the Investment Advisers Act because it is unregistered, section 203 of the Act, 15 U.S.C. § 80b-3, and has furnished misleading and deceptive investment advice to

its readers, sections 206 and 208 of the Act, 15 U.S.C. §§ 80b-6, -8.

An investment adviser as defined in § 202 of the Act

> "means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include . . . (D) the publisher of any bona fide newspaper . . . of general and regular circulation; . . . ." 15 U.S.C. § 80b-2(a)(11) (emphasis supplied).

Plaintiffs' own papers herein show that the Post has been published daily except Sunday since it was founded in 1801.[6] And even if that were not the case, such a widely known fact would be a fit subject for judicial notice. The plain truth is that newspapers of general circulation like the Post are not meant to be subject to the Investment Advisers Act and no amount of casuistic ratiocination can make it otherwise.[7]

In view of the court's conclusion that the Investment Advisers Act does not apply to the Post, the question of plaintiffs'standing to sue does not require extended

discussion. There being no explicit right of action under the Act, any private remedy must be implied and then only in favor of intended beneficiaries of the Act. Bolger v. Laventhol, Krekstein, Horwath & Horwath, 381 F.Supp. 260, 262 (S.D.N.Y. 1974). Accord, Jones v. Equitable Life Assurance Society of U.S., 409 F.Supp. 370, 372 (S.D.N.Y. 1975); The Fund of Funds, Limited v. Vesco, Current CCH Fed. Sec. L. Reptr. ¶95,644 (S.D.N.Y. 1976). Cf. J. I. Case Co. v. Borak, 377 U.S. 426 (1964).

Plaintiffs obviously do not qualify as intended beneficiaries, for they are not "persons who paid for investment advice" or are in need of protection "from dishonest and self-dealing advisers." Bolger, supra, at 263. As the anti-fraud provision of the Act makes clear, 15 U.S.C. § 80b-6, the legislative purpose was to protect investors, not issuers of securities such as plaintiffs here. They received no advice from the Post and cannot assert a claim based upon alleged injury to the Post's readers at large. In short, plaintiffs fail to state any claim cognizable under the Investment Advisers Act. Cf. Independent Investors Protective League v. SEC, 495 F.2d 311 (2 Cir. 1974).

2. The Securities Act of 1933

The complaint fails to spell out, by way of fact or legal claim, how the Post violated the Securities Act of 1933. That Act, which deals with disclosure and fraud in the sale of securities, was designed to protect purchasers of securities from deceptive practices in the offering or sale of securities and to enforce that policy by civil or criminal liability depending on the circumstances. The remedy of civil liability against the offeror or seller of a security in favor of "the person purchasing such security," § 12 of the Act, 15 U.S.C. § 77l, is available only to purchasers of securities. Schoenbaum v. Firstbrook, 268 F. Supp. 385 (S.D.N.Y. 1967), aff'd, 405 F.2d 200 (2 Cir. 1968), rev'd on other grounds, 405 F.2d 215 (2 Cir. 1968) (en banc), cert. denied, 395 U.S. 906 (1969); Greater Iowa Corp. v. McLendon, 378 F.2d 783 (8 Cir. 1967); Davidge v. White, 377 F.Supp. 1084 (S.D.N.Y. 1974); Duffy v. Ranger Securities Corp., 346 F.Supp. 1401 (E.D.N.Y. 1972); Leonard v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 64 F.R.D. 432 (S.D.N.Y. 1974). Plaintiffs, not being purchasers, state no claim under the Act.[8]

The second possible ground for relief under the

1933 Act is a criminal provision prohibiting fraud in connection with "the offer or sale of any securities." § 17 of the Act, 15 U.S.C. § 77q. Better authority holds that no civil remedy should be implied under § 17 because of the detailed and precise remedies specifically created in the other provisions of the Act. Welch Foods Inc. v. Goldman, Sachs & Co., 398 F.Supp. 1393, 1399-1401 (S.D.N.Y. 1974). Accord, Dyer v. Eastern Trust & Banking Co., 336 F. Supp. 890, 903 (D. Me. 1971). See Architectural League of New York v. Bartos, 404 F.Supp. 304, 313 (S.D.N.Y. 1975). But even if a private right of action may be implied under § 17, the same reasoning pertaining to express civil liability impels the conclusion that only defrauded purchasers of securities are protected. See Superintendent of Insurance of State of New York v. Bankers Life & Casualty Co., 430 F.2d 355, 359 (2 Cir. 1970) (dictum), rev'd on other grounds, 404 U.S. 6 (1971).

No "offer or sale of any securities" is alleged to have occurred here in which plaintiffs could have been defrauded. And plaintiffs cannot bolster their 1933 Act claims by relying on their self-appointed private attorney general status. See discussion on standing ante. Nor do

the provisions authorizing discretionary conduct of the SEC or the Attorney General, see, e.g., § 20(b) of the Act, 15 U.S.C. § 77t, afford them any basis for maintaining their private cause of action. Hence their claims under the 1933 Act must be dismissed for failure to state a claim for relief.

3. Securities and Exchange Act of 1934

As in their claim under the 1933 Act, plaintiffs' complaint alleges no more than a jurisdictional basis, § 27 of the 1934 Act, 15 U.S.C. § 78aa, and a bare-faced allegation of violation of the Act. If anything, plaintiffs seek relief for claimed violations of § 10b of the 1934 Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5 promulgated thereunder. But once again no claim may be maintained.

Only actual purchasers or sellers of securities may avail themselves of the private civil damage remedy implied from the proscription of fraud "in connection with the purchase or sale" of securities by § 10(b) and Rule 10b-5. Birnbaum v. Newport Steel Corp., 193 F.2d 461 (2 Cir.), cert. denied, 343 U.S. 956 (1952). The Birnbaum rule, long-standing in this circuit and recently reaffirmed by the Supreme Court, Blue Chip Stamps v. Manor Drug Stores, 421

U.S. 723 (1975), precludes plaintiffs' claim here. They have not been defrauded as an actual purchaser or seller of a security.

Plaintiffs' allegation that the Post's selective tombstone publication policy is a scheme or artifice to defraud does not relate to any transaction inter se but rather to conduct of the Post affecting the public at large. In order to maintain any claim -- whether for money damages or for injunctive relief -- some concrete injury connected with the purchase or sale of a security must be alleged. Plaintiffs fail to do so. The claim under the 1934 Act is fatally defective and must be dismissed.

4. Ku Klux Klan Act

Aside from charging manipulation of the capital markets, plaintiffs claim that the Post's refusal to run their tombstone ad abridged their first amendment rights to free speech and association. The statute they rely upon is a provision of the Ku Klux Klan Act of 1871, which attaches civil liability to those who conspire

> "for the purpose of impeding, . . . obstructing or defeating, in any manner, the due course of justice in any State or territory with intent to deny to any citizen the equal protection of the laws,

> or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protections of the laws." 42 U.S.C. § 1985(2).

Plaintiffs confront two obstacles in stating a claim under that Act. First, they fail to indicate the existence of "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." Griffin v. Breckenridge, 403 U.S. 88, 102 (1971). Meeting that requirement is as essential under § 1985(2) as it is under subsection 3, which the Griffin Court considered. Hahn v. Sargent, 523 F.2d 461, 469 (4 Cir. 1975), cert. denied, 96 S.Ct. 1495 (1976); Johnson v. NBC Inc., 356 F. Supp. 904 (E.D.N.Y. 1973); McIntosh v. Garofalo, 367 F.Supp. 501, 502 (W.D. Pa. 1973); Phillips v. Singletary, 350 F.Supp. 297, 302 (D.S.C. 1972).

The only class of which plaintiff Person purports to be a member is that of "attorneys seeking to publicly finance the antitrust litigation of his client." Plaintiff Thee places himself in the class of plaintiffs in antitrust suits seeking to publicly finance litigation. Most broadly, both plaintiffs claim that defendant discriminates against

private attorneys general who attempt to enforce their rights against persons with whom defendant does business.

Plaintiffs' proposed classes simply are not cognizable under the Act. Although there may be other private attorneys general, plaintiffs do not claim the Post's alleged discriminatory refusal to publish the tombstone ad was directed at them because of their membership in the suggested classes. Cf. Arnold v. Tiffany, 487 F.2d 219 (9 Cir. 1973), cert. denied, 415 U.S. 984 (1974). In contrast, the conspiracy in Griffin, supra, was inspired by the race of the plaintiffs. No such class characteristic exists here.

Secondly, plaintiffs do not allege any invidiously discriminatory motive on the part of the Post. Instead they raise claims under the first amendment, not an intent to deny equal protection. Bergman v. Stein, 404 F.Supp. 287, 295 (S.D.N.Y. 1975). See Murphy v. Mt. Carmel High School, 543 F.2d 1189 (7 Cir. 1976).

Accordingly, the cause of action under 42 U.S.C. § 1985(2) must be dismissed for failure to state a claim for relief.

5. 42 U.S.C. § 1986

Plaintiffs' claim under 42 U.S.C. § 1986 is

dependent upon establishing a claim under § 1985 and therefore must fall with it.

Summary Judgment Motion

1. Sherman Act § 1

The complaint alleges in substance a conspiracy engaged in a concerted refusal to deal with plaintiffs, a per se violation of section 1 of the Sherman Act, 15 U.S.C. §1. Only the Post is named as a defendant. Named as co-conspirators, although not as defendants, are other major newspapers which declined to publish the tombstone and officers, directors, agents, employees and attorneys of the Post. Defendant has moved for summary judgment, albeit conceding that the elements of a section 1 claim have been pleaded, but strongly arguing that facts supportive of plaintiffs' claim are nonexistent, primarily because no conspiracy has been, or can be, shown.[9]

The following facts do not appear to be in genuine dispute. On June 22, 1976 plaintiffs' tombstone ad and prospectus were submitted to Richard LeLong in the Post's department of financial advertising. LeLong stated he would have to discuss the matter with the Post's advertising committee and did discuss the advertisement with Lawrence Goldreyer, Financial Advertising Director. The next day LeLong

telephoned Person's office and advised that the Post would not publish Thee's advertisement. LeLong and Goldreyer aver that their refusal to accept the ad was made in the exercise of their independent business judgment.

Plaintiff alleges that identical requests to publish their tombstone ad were submitted not only to the Post, but also to the New York Times, the Wall Street Journal, the New York Law Journal, the Staten Island Advance and seven other business magazines and that they were turned down on similar grounds. The tombstone ad ran, however, on July 23, 1976 in the Daily News.

The whole thrust of plaintiffs' group boycott claim is the alleged conspiracy among the officers, directors and attorneys of the Post.[10] In detail, plaintiffs recount statements of the Post's employees upon receipt of the tombstone advertisement as to its merits, reasons why the Post's attorneys would support the Post's refusal to publish such an ad, and the interest of the Post in protecting its major advertisers from the competition of small businesses. From this perspective, plaintiffs' allegations of concerted activity among the metropolitan newspapers must be taken to be an afterthought, a collateral and purely makeweight

argument.

To the extent that plaintiffs' theory of concerted activity is that the Post conspired with its own officers, directors, employees, agents or attorneys, their § 1 claim may not be maintained, for, as a matter of law, the Post would then be conspiring with itself to perform a single, unilateral act. Morton Buildings of Nebraska, Inc. v. Morton Buildings, Inc., 531 F.2d 910, 917 (8 Cir. 1976); Nelson Radio & Supply Co. v. Motorola, Inc., 200 F.2d 911, 914-15 (5 Cir. 1952), cert. denied, 345 U.S. 925 (1953).

As to plaintiffs' theory that the Post conspired with the other metropolitan newspapers, it is clear that they must show more than unilateral conduct, more than parallel conduct and even more than consciously parallel conduct on the part of several newspapers to establish a concerted refusal to deal with them. Theatre Enterprises, Inc. v. Paramount Film Distributing Corp., 346 U.S. 537, 541 (1954); Modern Home Institute, Inc. v. Hartford Accident & Indemnity Co., 513 F.2d 102, 110 (2 Cir. 1975). To defeat defendant's summary judgment motion, plaintiffs must come forward with some facts indicating the likelihood of concerted activity among the Post and the other newspapers, to refuse to publish

their tombstone advertisement.

The bare assertion that facts essential to show the existence of the conspiracy lie within the exclusive control of the Post does not bring plaintiffs within the application of rule 56(f), F.R.Civ.P., United States v. Donlon, 355 F.Supp. 220, 225 (D. Del.), aff'd, 487 F.2d 1395 (3 Cir. 1973). In order to invoke rule 56(f):

> "the opposing party should present his affidavit showing that the knowledge or control of the facts is exclusively or largely with the moving party and describe his attempts to obtain those facts. The mere averment of exclusive knowledge or control of the facts by the moving party is not adequate: the opposing party must show to the best of his ability what facts are within the movant's exclusive knowledge or control; what steps have been taken to obtain the desired information pursuant to the discovery procedures under the Rules; and that he is desirous of taking advantage of these discovery procedures." 6 J. Moore, Federal Practice §56.24 at 56-1432 (2 ed. 1976).

A searching examination of plaintiff's papers reveals a total failure to make a showing adequate to sustain the test of rule 56(f). Person's affidavit refers the court to plaintiffs' 9(g) statement of facts in dispute, required to be filed by the General Rules of this court, "for a

statement of the essential facts (based on information and belief, for the most part) which I plan to prove." Affid. ¶2. The sole alleged "facts" are the following: (1) that, upon information and belief, the Post discussed with other publishers its refusal to publish Thee's tombstone and these communications were to arrange a boycott of any tombstone advertising by Person's clients (¶ 26); and (2) that advertising managers of metropolitan newspapers, including the Post, upon information and belief, meet as directors of the Better Business Bureau concerning standards of advertising acceptability (¶40).

The second "fact" is easily disposed of. The Post's employees plaintiffs identify were no longer employed by the Post when the tombstone ad was submitted, nor did the Post belong to the Better Business Bureau. Thus, this "fact" is insufficient to raise an inference of a group boycott.

The first "fact" is but a conclusory allegation. Plaintiffs have not described any attempts to obtain the necessary facts to support their allegation nor have they set forth what steps they plan to take should their motion be granted. In addition they have not made the best effort to

present facts which were not within the exclusive control of the Post. For example, they do not reveal in any affidavit what transpired when they submitted their ad to the other newspapers. They do not even refer to their attempts to publish the ad in the other newspapers anywhere in their 9(g) statement of facts in dispute.

Indeed, upon close reading of the paragraph in question, plaintiffs do not explicitly assert that the alleged communications among the newspapers actually resulted in an agreement to boycott the ad but rather "were to arrange" such a boycott. Thus, even upon information and belief, plaintiffs do not present facts sufficient to show that a group boycott occurred. The court will not countenance an antitrust claim to be maintained absent any significant probative evidence tending to support the complaint, First National Bank v. Cities Service Co., 391 U.S. 253, 290 (1968).

One further point requires discussion. Simply put, it is whether the newspapers' joint action, assuming arguendo such occurred, resulted in a restraint of trade required to state a claim under the Sherman Act. The antitrust laws were enacted for the protection of competition.

See Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962). Yet Thee, a prospective advertiser, does not compete with the newspapers. Nor could the newspapers' action have been intended to prevent Thee from competing with them in the dissemination of information.

The Sherman Act is aimed primarily at combinations having commercial objectives. Klor's v. Broadway-Hale Stores, 359 U.S. 207, 213 n.7 (1959). Exactly then, what was the objective of any agreement? Plaintiffs name as the object of the conspiracy the newspapers' protection of their major advertisers to the detriment of those small businesses who would compete wwth the giants of the market and those individuals who seek to vindicate their rights against large corporations through use of legal process. These objectives, however, are realized not by combination among the newspapers but rather by agreements between a newspaper and the corporations it is allegedly in the newspapers' interest to favor. Proof of such a conspiracy is not the aim of this lawsuit. Plaintiffs, therefore, have not shown any restraint of trade resulting from the alleged "refusal to deal" with them.

Additionally, plaintiffs would be required to prove

antitrust injury, that is, "injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., _____ U.S. _____ (45 U.S.L.W. 4138, Jan. 25, 1977); GAF Corp. v. Circle Floor Co., Inc., 463 F.2d 752 (2 Cir. 1972), cert. dismissed, 413 U.S. 901 (1973). For plaintiffs to have suffered damages requires not merely a showing that they were injured by a refusal to deal with them, but that they would have been successful in marking the securities as a result of publishing the tombstone ad in the newspapers. Nothing suggests such a showing could be made.

The section 1 claim is therefore vulnerable to summary dismissal on the merits.

2. Sherman Act § 2

Plaintiffs' monopolization claim is raised solely by inference from references to section 2 of the Sherman Act, 15 U.S.C. § 2, in the jurisdictional statement of the complaint (¶1), to an alleged effect on interstate commerce (¶12), and to claimed product and geographic markets consisting of newspapers in New York City suitable for publication of tombstone advertisements (¶13). These

statements are insufficient to plead a section 2 claim. The complaint fails to allege either that the Post possesses monopoly power, see United States v. Grinnell Corp., 384 U.S. 563 (1966), or has attempted to monopolize with a dangerous probability of success, see Swift & Co. v. United States, 196 U.S. 375 (1905). Nor are any facts supportive of the claim or of personal injury to plaintiffs alleged. The monopoly claim is thus manifestly without merit.

Attorneys Fees

The motions of both parties for the award of attorneys fees are denied. This suit challenging the seemingly arbitrary action of the Post in refusing to publish a tombstone ad cannot be viewed as frivolous even though the court has found the plaintiffs' arguments unconvincing and has dismissed all the claims. See Klein v. Shields & Company, 470 F.2d 1344, 1347 (2 Cir. 1972).

Accordingly, plaintiffs' motions are in all respects denied and defendant's motions to dismiss the complaint and for summary judgment on the antitrust claims are granted.

SO ORDERED.

Edward R. Neaher

U. S. D. J.

Dated: Brooklyn, N.Y.
February 22, 1977

# F O O T N O T E S

1. These included the New York Times, Wall Street Journal, New York Law Journal, Staten Island Advance and seven financial magazines. Second Amended Complaint, ¶8.

The proposed tombstone read as follows:

> This advertisement is neither an offer to sell nor a solicitation of an offer to buy any of these securities. The offer is made only by the Offering Circular.
>
> NEW ISSUE
>
> 100,000 Shares, with Maximum Contingent Compound Interest of 25% Per Year; $5.00 Par Value; Redeemable and Callable; in the Lawsuit
>
> CHRISTIAN THEE v. GENERAL MILLS, INC., GENERAL MILLS FUN GROUP, INC. (formerly named PARKER BROTHERS, INC.) and MARVIN GLASS & ASSOCIATES
>
> PRICE: $5.00 PER SHARE
>
> Copies of the Offering Circular may be obtained from the undersigned only in states in which the undersigned is qualified to act and in which the Offering may be legally distributed.
>
> CHRISTIAN THEE
> 76 State Street
> Brooklyn, N.Y. 11201
> (212) 834-1513

2. Except the New York Daily News which published the Tombstone on July 23, 1976.

3. Triebwasser & Katz v. American Telephone & Telegraph Co., 535 F.2d 1356, 1359 (2 Cir. 1976); Sonesta International Hotels Corp. v. Wellington Associates, 483 F.2d 247, 250 (2 Cir. 1973); Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319, 323 (2 Cir. 1969).

4. The right to transfer partial interests in the claim in suit as a means of financing a litigation is the subject of another lawsuit. Person v. Association of the Bar of the City of New York, 75 C 1473. See 414 F.Supp. 139 (E.D.N.Y. 1976).

5. Thee v. General Mills, Inc., et al., 75 C 1554, an antitrust and copyright action alleging piracy of Thee's idea for a game originally submitted to Parker Brothers, Inc., now owned by General Mills.

6. Plaintiffs' Notice of Motion dated July 2, 1976, Exh. D.

7. Nothing said in SEC v. Wall Street Transcript Corp., 422 F.2d 1371 (2 Cir.), cert. denied, 398 U.S. 958 (1970), is to the contrary. Indeed, as defendant correctly points out, the court there simply upheld the right of the S.E.C. to enforce a subpoena issued in an investigation to determine whether the named publication was an investment adviser or a bona fide newspaper. Only the S.E.C.'s power to investigate was upheld; no determination was made as to the status of the publication with respect to the exclusion enjoyed by regular newspapers such as the Post.

8. A tombstone ad, moreover, is specifically excepted by

the Act, § 2(10), and SEC Rule 134 from the definition of prospectus. Such an advertisement may state "from whom a written prospectus meeting the requirements of [§ 10] may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed" and other information prescribed by the SEC.

9. In order to prove a claim of concerted refusal to deal or joint boycott, plaintiffs must establish (1) a conspiracy, combination or agreement on the part of defendant and others (2) not to publish plaintiffs' tombstone ad announcing a public offering of securities, and (3) that they were injured pursuant to the enforcement of the policy. Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656 (1961); Klor's, Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959); Associated Press v. United States, 326 U.S. 1 (1945); Fashion Originators' Guild of America, Inc. v. FTC, 312 U.S. 457 (1941).

Defendant also argues that plaintiff Person does not have standing to assert a § 1 claim because he did not seek to publish the tombstone ad on his own behalf, the Post did not refuse to deal with Person and he could suffer no injury from its conduct. Person asserts he was to receive the proceeds from the securities sold as trustee and therefore the tombstone would be published on his behalf as well as that of his client, Thee. He also asserts injury to his antitrust litigation practice because of added overhead and expense not immediately reimbursed by his client.

10. Plaintiffs strenuously argue that the Post's attorneys have a specific, personal interest in defeating plaintiffs in this lawsuit because they also represent defendants in another antitrust action in which Person is attorney for the plaintiffs and for which Person also hopes to obtain public financing. These facts fail to show a group boycott of plaintiffs.

CLOSED

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ FEB 23 1977 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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CARL E. PERSON and CHRISTIAN THEE,

Plaintiffs,

- against -

NEW YORK POST CORPORATION,

Defendant.

----------x

JUDGMENT

76 C 1217

N'TIMED

A memorandum and order of Honorable Edward R. Neaher, United States District Judge, having been filed on February 23, 1977, denying plaintiffs' motion for a preliminary injunction and granting the defendant's motions to dismiss the complaint and for summary judgment on the antitrust claims and denying the motions of both parties for attorney's fees, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendant and that the plaintiffs' motion for a preliminary injunction is denied and the defendant's motions to dismiss the complaint and for summary judgment on the antitrust claims are granted and that the motions of both parties for attorney's fees are denied.

Dated: Brooklyn, New York
February 22, 1977

Lewis Orgel
Clerk

DEFENDANT'S NOTICE OF SUBSTITUTION OF ATTORNEYS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | |
| Plaintiffs, | : | 76 Civ. 1217 (ERN) |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | NOTICE OF SUBSTITUTION OF ATTORNEYS |
| Defendant. | : | |

- - - - - - - - - - - - - - - - - - - - x

PLEASE TAKE NOTICE that the undersigned attorneys have been substituted as attorneys of record for the defendant in the above-entitled action in place and in stead of Messrs. Paul, Weiss, Rifkind, Wharton & Garrison.

Dated: New York, N.Y.
March 4, 1977

Squadron, Ellenoff, Plesent & Lehrer

SQUADRON, ELLENOFF, PLESENT & LEHRER
551 Fifth Avenue
New York, N.Y. 10017
(212) 661-6500

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | 76 C 1217 (ERN) |
| Plaintiffs, | : | NOTICE OF MOTION FOR REARGUMENT |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

----------x

TO: SQUADRON, ELLENOFF, PLESENT & LEHRER
Attn: Neal M. Goldman, Esq.
Attorneys for Defendant
551 Fifth Avenue
New York, N.Y. 10017

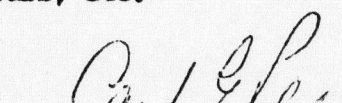
PLEASE TAKE NOTICE that, pursuant to Rule 9(m) of the General Rules for the Eastern District of New York, and upon the accompanying memorandum of law and all prior proceedings and papers herein, plaintiffs will move this Court, before Honorable Edward R. Neaher, United States District Judge, on March 16, 1977, in Chambers, Room 252, at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, N.Y., for reargument of each of the motions and cross-motions (to the extent set forth in said memorandum of law) decided in the Memorandum and Order of this Court, dated February 22, 1977, and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, under Rule 9(m), "No oral argument shall be heard unless the court grants the motion and specifically directs

that the matter shall be reargued orally. No affidavits shall be filed by any party unless directed by the court." Accordingly, no appearance by counsel (or pro se party) is required or requested in absence of notification by the court.

Dated: New York, New York
March 4, 1977

Yours, etc.



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RICHARD J. PRENTISS, JR.
Attorney for Christian Thee
35 E. 72nd Street
New York, N.Y. 10021

(212) 628-2400

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | 76 C 1217 (ERN) |
| Plaintiffs, | : | AMENDED NOTICE OF MOTION FOR REARGUMENT |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

TO: SQUADRON, ELLENOFF, PLESENT & LEHRER
Attn: Neal M. Goldman, Esq.
Attorneys for Defendant
551 Fifth Avenue
New York, N.Y. 10017

PLEASE TAKE NOTICE that, pursuant to Rule 9(m) of the General Rules for the Eastern District of New York, and upon the accompanying memorandum of law and all prior proceedings and papers herein, plaintiffs will move this Court, before Honorable Edward R. Neaher, United States District Judge, on March 17, 1977, in Chambers, Room 252, at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, N.Y., for reargument of each of the motions and cross-motions (to the extent set forth in said memorandum of law) decided in the Memorandum and Order of this Court, dated February 22, 1977, and for such other and further relief as the Court may deem just and proper.

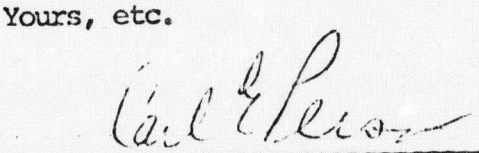
PLEASE TAKE FURTHER NOTICE that, under Rule 9(m), "No oral argument shall be heard unless the court grants the motion and specifically directs

that the matter shall be reargued orally. No affidavits shall be filed by any party unless directed by the court." Accordingly, no appearance by counsel (or pro se party) is required or requested in absence of notification by the court.

Only the return date has been amended by this Amended Notice of Motion for Reargument.

Dated: New York, New York
March 4, 1977

Yours, etc.



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248 F.2d 319, 322-323 (2d Cir. 1957); Package Closure Corp. v. Sealright Co., 141 F.2d 972, 978 (2d Cir. 1944); Radovich v. National Football League, 352 U.S. 445, 453, 77 S.Ct. 390, 1 L.Ed.2d 456 (1957); Trans World Airlines Inc. v. Hughes, 332 F.2d 602, 611 (2d Cir. 1964); United States v. West Virginia Pulp & Paper Co., 36 F.R.D. 250, 252 (S.D.N.Y. 1964).

> "That plaintiff and plaintiff-intervener have alleged at least the bare bones of a cause of action against defendant is clear. There are distinct allegations that defendant has violated the anti-trust laws to the detriment of plaintiffs and the public and that these violations have proximately caused damage to the plaintiffs. Nothing more is required as far as this motion is concerned. Gilmour v. Wood, Wire & Metal Lathers Inter. Union, Local No. 74, 223 F.Supp. 236, 248 (N.D.Ill. 1963).
>
> * * *
>
> "If what the defendant really seeks is more information concerning plaintiffs' allegations, it has recourse to the well established means available to it." (pp. 351-352)

Accordingly, this Court should permit reargument of the motions and cross-motions to the extent that plaintiffs claims were held to be insufficiently pleaded under Rule 12(b)(6), F.R.Civ.P.

PLAINTIFFS WERE ENTITLED TO RULE 56(f) DISCOVERY

The Court cited United States v. Donlon, 355 F.Supp. 220, 225 (D. Del.), aff'd, 487 F.2d 1395 (3rd Cir. 1973) in support of its decision that plaintiffs were not entitled to limited discovery under Rule 56(f) in spite of their request for such discovery. The Donlon case denied such discovery because

> "Donlon has totally failed to utilize his rights of discovery to contradict the facts asserted in DeWitt's affidavit and repeated by the documents produced. Suspicion alone without discovery is not enough." p. 225.

Plaintiffs filed their motion for a preliminary injunction immediately after the complaint was filed, without any prior opportunity for discovery. During a preliminary conference in the Chambers of Judge Neaher, plaintiff Person requested that plaintiffs be able to obtain discovery relating to the conspiracy in anticipation of the summary judgment motion, but the Court stated that plaintiffs could not have such discovery. In opposition to defendant's cross-motion for summary judgment and dismissal and other relief, plaintiffs cross-moved for discovery under Rule 56(f), which was denied by this Court, in its Memorandum. Accordingly, plaintiffs have diligently sought discovery, but have been prevented from obtaining discovery. Thus, Donlon is not relevant.

Hummel v. Riordon, 56 F.Supp. 983, 987 (D. N.D. Ill. E.D. 1944) held in part:

> "In cases where the information with reference to a claimed fraudulent transaction rests exclusively within the knowledge of the participants, ... and in ... similar cases-- it is apparent that it would be inequitable and unjust for the court to grant a motion for summary judgment upon the affidavit of the defendant where the opposing party has no means to successfully meet the facts alleged in the affidavit. To hold so would be a denial of justice to a party who has presently not available the information with reference to the claimed fraud of the defendant."

In Ward v. United States, 471 F.2d 667, 670 (3rd Cir. 1973), the court held that when the facts are solely in the possession of the defendant, a continuance should be granted as a matter of course. It is obvious in a conspiracy case that the facts are known only to defendant and the alleged co-conspirators (including defendant's attorneys), and that plaintiffs have not been able to depose them because of Judge Neaher's order.

In Littlejohn v. Shell Oil Co., 483 F.2d 1140 (5th Cir. 1973), cert. den. 414 U.S. 1116, the court (en banc) vacated a summary judgment for the defendant when the district court failed to consider plaintiff's Rule 56(f) request which did not satisfy the form requirements of Rule 56(e).

Literal adherence to Rule 56(f) and 56(e) is not required and in any event the Court should have followed Shultz v. Manufacturers & Traders Trust Co., 30 F.Supp. 443 (W.D.N.Y. 1939), in which the court denied the Rule 56(f) motion but with leave to renew the motion within 10 days upon a showing required by Rule 56(f). Under the circumstances of the plaintiffs' case against the Post, it was an abuse of discretion for this Court to have failed to give plaintiffs an opportunity to correct any technical deficiencies found by this Court. Plaintiffs made at least a substantial showing of why they did not have the facts, and it well known that summary judgment should not be granted readily in conspiracy cases because of the difficulties in obtaining evidence, which is known only to the co-conspirators, for the most part. See Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464 (1962), which said in part:

> "It may be that upon all of the evidence a jury would be with the respondents. But we cannot say on this record that 'it is quite clear what the truth is.' Certainly there is no conclusive evidence supporting the respondents' theory. We look at the record on summary judgment in the light most favorable to Poller, the party opposing the motion, and conclude here that it should not have been granted. We believe that summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, and proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.'" 368 U.S. 473.

The Court's reliance on First National Bank of Arizona v. Cities Service Co., 391 U.S. 253 (1968) was inappropriate. Cities Service was only a "tangential defendant" and as such had no parallel interests with the other (full) members of the alleged conspiracy; it was more plausible to believe that the interests of Cities Service coincided rather than conflicted with plaintiff Waldron's interests; plaintiff Waldron did not request any other discovery when he should have done so; Cities Service entered the picture through its actions subsequent to start of the alleged conspiracy; Cities Service was a 5-3 decision, with a vigorous dissenting opinion claiming that Poller was not being followed by the majority, and that plaintiff was wrongfully being deprived of his right to a trial; plaintiff Waldron switched his factual basis belatedly, 7 years after filing of his complaint; Cities Service was joined on mere suspicion.

Poller's rationale should be applied to motions under Rule 56(f), so that requests for discovery in conspiracy actions be granted pursuant to judicial notice that plaintiff needs the discovery in such cases, rather than make the plaintiffs make detailed showings of what is obvious to all persons concerned, even if a plaintiff fails to meet some technical requirement.

ATTORNEYS OF DEFENDANT CAN BE CO-CONSPIRATORS WITH DEFENDANT, CONTRARY TO COURT'S HOLDING

The Court, in its Memorandum at p. 18, held that the attorney for a defendant cannot be a co-conspirator with the defendant. This is plainly wrong, as pointed out in plaintiffs' memorandum dated September 6, 1976, at pp. 16-17 and cases cited therein. An attorney can go beyond legal representation and become a co-conspirator. Any holding to the contrary gives lawyers a license to commit crimes without fear of punishment.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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|---|---|---|
| CARL E. PERSON and CHRISTIAN THEE, | : | 76 C 1217 (ERN) |
| Plaintiffs, | : | NOTICE OF APPEAL |
| -against- | : | |
| NEW YORK POST CORPORATION, | : | |
| Defendant. | : | |

----------x

NOTICE IS HEREBY GIVEN that plaintiffs hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment entered herein on February ~~22~~ 23, 1977 and from each and every part thereof.

Dated: New York, New York
March 24, 1977

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TO: SQUADRON, ELLENOFF, PLESENT & LEHRER
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Attorneys for Defendant
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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CARL E. PERSON and CHRISTIAN THEE,

Plaintiffs,

-against- 76 Civ. 1217 (ERN)

NEW YORK POST CORPORATION,

Defendant.

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MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR RE-ARGUMENT

Defendant New York Post Corporation (the "Post"), respectfully submits this memorandum of law in opposition to plaintiff's motion to rearque the motions and cross-motions so thoroughly discussed and determined in this Court's Memorandum and Order dated February 22, 1977, denying all of plaintiffs' motions and granting defendant's motions.

POINT I

PLAINTIFFS' GROUNDS FOR REARGUMENT HAVE ALREADY BEEN FULLY CONSIDERED AND DETERMINED BY THIS COURT

It is apparent that plaintiffs are seeking a second bite of the same apple by asserting in their present motion the very same arguments and theories upon which they re-

lied in connection with the Court's initial consideration of the motions. It is abundantly clear that plaintiffs have not raised any new theories or found any law upon which they can rely to defeat defendant's motion for summary judgment.

This Court in its cogent and thorough analysis of plaintiffs myriad theories of recovery, specifically discussed and rejected plaintiff's attempt (1) to set forth cognizable causes of action under §§1 and 2 of the Sherman Act, and (2) to secure wholesale discovery in order to find some thread of support for their claims.

In their initial motions plaintiffs devoted the vast portions of their memoranda to arguments based on the Investment Advisors Act and the Securities Act of 1933 and the Security Exchange Act of 1934. To permit plaintiffs to rely once again on the Sherman Act would be in direct contravention of this Court's prior decision. This Court explicitly found that plaintiffs had failed to set forth any facts showing either (1) concerted activity among the Post and other newspapers to refuse to publish the tombstone advertisement, or (2) any commercial objective for any alleged group boycott, or (3) any causal injury to plaintiffs resulting from the alleged refusal to deal. As the Court has already stated, these allegations of concerted activity "must be taken to be an afterthought a collateral and purely makeweight

argument." Memorandum and Order, pp. 17-18.

Additionally, the Court has responded fully to plaintiffs' repeated plea for discovery pursuant to Rule 56(f) of F.R.Civ. P.: "A searching examination of plaintiffs' papers reveals a total failure to make a showing adequate to sustain the test of rule 56(f)." Memorandum and Order, p. 19.

Plaintiffs have failed on this motion for reargument to set forth any theories or significant precedent which the Court may have overlooked in rendering its opinion. On the contrary, the Court has extensively discussed all theories raised by plaintiffs and revealed them as wholly without merit.

## POINT II

## PLAINTIFFS MUST NOT BE ALLOWED YET AGAIN TO AMEND THEIR COMPLAINT

On or about June 25, 1976 plaintiff Carl E. Person ("Person") commenced this action by filing a twenty-five page complaint with this Court. On or about July 6, 1976, plaintiff Person filed a first amended complaint. Plaintiffs Person and Thee then served a second amended complaint on or about July 22, 1976. Notwithstanding plaintiffs' attempt to once again carry on this litigation *ad infinitum*, it is clear that there is a point when all litigation must come to

an end. "A busy district court need not allow itself to be imposed upon by the presentation of theories seriatim." Freeman v. Continental Gin Company, 381 F. 2d 459, 469 (5th Cir. 1967), rehearing denied 384 F. 2d 365 (1967). Permission to amend a complaint after judgment is in the sound discretion of the district court. Hurd v. Dimento & Sullivan, 440 F. 2d 1322 (1st Cir. 1971), cert. denied 404 U.S. 862, rehearing denied, 404 U.S. 961. "There is no indication that the addition of [any] fact ... the plaintiff could legitimately plead would cure the deficiencies of the complaint. In these circumstances leave to amend is inappropriate." Washburn v. Madison Square Garden Corporation, 340 F. Supp. 504, 509 (S.D.N.Y. 1972).

Plaintiffs have been given more than ample opportunity to frame and plead a viable cause of action and have wholly failed to state a valid claim. Accordingly, they should not be permitted to continue their frivolous action any longer.

## CONCLUSION

Plaintiffs' motion for reargument and leave to amend their complaint should be denied in all respects.

Dated: New York, New York,
March 28, 1977.

Respectfully Submitted,

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Neal M. Goldman
Slade R. Metcalf

Of Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - - -x

CARL E. PERSON and CHRISTIAN THEE, :

Plaintiffs, :

-against- : 76 C 1217

NEW YORK POST CORPORATION, :

Defendant. :

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FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
☆ APR 8 1977 ☆
TIME A.M.
P.M.

MEMORANDUM ORDER

Plaintiffs' application for reargument of the motions and cross-motions dealing with their Sherman Act claims, decided against them in the Memorandum and Order of February 22, 1977, is denied.

The court remains firmly of the view that the monopolization claim is manifestly without merit, in fact or in law, such that amendment of the complaint should not be allowed. With respect to the §1 claim, for the reasons already set forth the court adheres to its opinion that summary judgment was appropriate, notwithstanding the lack of discovery by plaintiffs. Plaintiffs' memorandum does not present any



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matter or controlling decision to alter the court's decision in this case. Instead, it discusses matters which are more appropriately addressed by an appellate court.

Accordingly, the motion for reargument and leave to amend is denied.

SO ORDERED.

Edward R. Neaher

U. S. D. J.

Dated: Brooklyn, New York
April 7, 1977



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COPY RECEIVED
SQUADRON, ELLENOFF, PLESENT & LEHRER
DATE 5/13/77
ATTORNEYS FOR Defendant-Appellee